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Supreme Court, U.S.
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No._____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2000

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NANCY D. JONAS
Petitioner,

v.

BETTYANN L. TALLEY, et. al.
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, South Carolina 29901
1-800-791-1558

152 pp

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QUESTIONS PRESENTED

1. Whether in considering the Magistrate's Order and Recommendation and determining the Appellant's Objections were without merit, the District Court judge properly reviewed under Article III and the governing federal law 28 U.S.C. § 636 by appropriate standards and Long v. Lockheed Missile and Space Co., 783 F. Supp. 249 (D.S.C. 1992), Charleston Division, correctly assessing the Magistrate's excessive assumption of authority under those provisions as an Article I judge, 5th Amendment being applicable; important questions of federal law and a conflict of law among the circuits that has not been, but should be settled by this Court.

2. Whether appellate review is derived from 28 U.S.C. § 636; Federal Rules of Civil Procedure, Rule 73 (c), Appeal; Federal Rules of Appellate Procedure, Rules 3, 4 and 5.1, including Advisory Committee Notes, 1986 Adoption and 28 U.S.C. § 1254(1) and 28 U.S.C. § 1291 where there is tension with 28 U.S.C. § 1447 (d), an important question of federal law that has not been, but should be settled by this Court.

3. Whether The Supremacy Clause of the United States Constitution, Article VI, Clause 2, required the Supreme Court of South Carolina in the first instance to promptly interpret federal law 28 U.S.C. § 1446(d) where the Orders and assumption of jurisdiction by lower appellate courts were in conflict with decisions of its court and those of the United States Supreme

Court, (South Carolina Appellate Court Rules, Rule 226 (b), SCACR, $100.00 filing fee paid); this Court may exercise its supervisory authority to ensure recognition and compliance with federal law where failure to protect constitutional rights is cognizable under 42 U.S.C. § 1983, et seq. and the 14th Amendment Sections (1) and (5).

PARTIES TO THE PROCEEDING

1. Bettyann L. Talley
409 Wilshire Boulevard
Savannah, Georgia 31419
Telephone: (912) 925-7804
Counsel: No Appearance to date

2. and others to be named

OPINIONS AND ORDERS BELOW

The United States Court of Appeals for the Fourth Circuit entered its unpublished opinion on October 19, 2000. A timely petition for Rehearing /Suggestion for Rehearing *en banc* was denied on November 20, 2000. Copies of these orders appear in the Appendix along with other relevant orders.

JURISDICTIONAL STATEMENT

The Writ of Certiorari comes before the Court for review of the Orders of the United States District Court, District of South Carolina, Charleston Division, entered on March 6, 2000 by the U. S. Magistrate Judge, Robert S. Carr and June 14, 2000 by the U.S. District Court Judge Sol Blatt, Jr. The United States Court of Appeals for the Fourth Circuit dismissed the case by unpublished opinion dated October 19, 2000 and entered an Order denying Rehearing/suggestion for Rehearing *en banc* on November 20, 2000. The case was viewed under 28 U.S.C. § 1447 (d) though the Magistrate and district court authority was obtained

pursuant to 28 U.S.C. § 636 and applicable Federal Rules of Civil and Appellate Procedure which pertained to that statute in which specific appellate procedure is available. The Magistrate's authority for Order in this case was additionally defined by Long v. Lockheed Missile and Space Co.,783 F. Supp. 249 (D.S.C. 1992), Charleston Division. Because of its national prominence, there may be the presumption that Chief Judge Hawkins opinion represents the division, if not the Fourth Circuit and is in accord with an earlier decision of the Third Circuit, Giangola v. Walt Disney World Co., 753 F. Supp.148 (D.N.J. 1990). The application of 28 U.S.C. § 1447 (d) by the District Court Judge and his avoidance of addressing Appellant's Objections with summary determination that they lack merit threatens to deprive the reviewing courts of appellate jurisdiction in violation of Article III and 5th and 14th Amendment, Section 1 and 5. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) and the The Federalist No. 78, Alexander Hamilton are relevant to definition of judicial power.

The jurisdiction for review by Certiorari is available under 28 U.S.C. § 636, Rule 73, FRCP, Rules 3,4 and 5, FRAP and 28 U.S.C. § 1254(1) and 28 U.S.C. § 1291 in accord with Catlin v. United States, 324 U.S. 229 (1945). In Felker v. Turpin, 518 U.S. 651 (1996), members of the court suggest there might be other ways for the Supreme Court to review Court of Appeals decisions such as pursuant to the All Writs Act, 28 U.S.C. § 1651. The Supremacy Clause, Article VI, U.S. Constitution authorizes jurisdiction where the court is the constitutional instrument for implementing Article III and Article VI. Quoting Justice Scalia from a 1995 case, because "the judicial power is one to render

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Petition for Writ of Certiorari

Petitioner respectfully prays that the Court grant Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

JURISDICTIONAL STATEMENT

The Writ of Certiorari comes before the Court for review of the Orders of the United States District Court, District of South Carolina, Charleston Division, entered on March 6, 2000 by the U. S. Magistrate Judge, Robert S. Carr and June 14, 2000 by the U.S. District Court Judge Sol Blatt, Jr. The United States Court of Appeals for the Fourth Circuit dismissed the case by unpublished opinion dated October 19, 2000 and entered an Order denying Rehearing/suggestion for Rehearing *en banc* on November 20, 2000. The case was viewed under 28 U.S.C. § 1447 (d) though the Magistrate and district court authority was obtained pursuant to 28 U.S.C. § 636 and applicable Federal Rules of Civil and Appellate Procedure which pertained to that statute in which specific appellate procedure is available. The Magistrate's authority for Order in this case was additionally defined by Long v. Lockheed Missile and Space Co.,783 F. Supp. 249 (D.S.C. 1992), Charleston Division. Because of its national prominence, there may be the presumption that Chief Judge Hawkins opinion represents the division, if not the Fourth Circuit and is in accord with an earlier decision of the Third Circuit, Giangola v. Walt Disney World Co., 753 F. Supp.148 (D.N.J. 1990). The application of 28 U.S.C. § 1447 (d) by the District Court Judge and his avoidance of addressing Appellant's Objections with summary determination that they lack merit threatens to deprive the reviewing courts of appellate jurisdiction in violation of Article III and 5th and 14th Amendment, Section 1 and 5. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) and The Federalist No. 78, Alexander Hamilton are relevant to definition of judicial power.

The jurisdiction for review by Certiorari is available under 28 U.S.C. § 636, Rule 73, FRCP, Rules 3, 4 and 5, FRAP and 28 U.S.C. § 1254(1) and 28 U.S.C. § 1291 in accord with Catlin v. United States, 324 U.S. 229 (1945). In Felker v. Turpin, 518 U.S. 651 (1996), members of the court suggest there might be other ways for the Supreme Court to review Court of Appeals decisions such as pursuant to the All Writs Act, 28 U.S.C. § 1651. The Supremacy Clause, Article VI, U.S. Constitution authorizes jurisdiction where the court is the constitutional instrument for implementing Article III and Article VI. Quoting Justice Scalia from a 1995 case, because "the judicial power is one to render dispositive judgments," the federal law (as used here) "effects a clear violation of separation of powers."

STATEMENT OF THE CASE

The civil action was filed by the Petitioner on February 23, 2000 with timely notice in compliance with statutory authority effectuating 28 U.S.C. § 1446(d) and the exclusive jurisdiction of the federal court. 28 U.S.C. § 1446 (d) states:

> Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such state court, which shall effect removal and the state court shall proceed no further unless and until the case is remanded.

Though aware of the exclusive jurisdiction of the federal court and the law relating to the continuance of any state action, the state court judge Thomas Kemmerlin, Jr., Master-in-Equity, Special Circuit Judge by appointment held a hearing, which petitioner did not attend, Steamship v. Tugman, 106 U.S. 118, 123 (1882), and issued an order dated February 24, 2000. A Return by the Magistrate for Beaufort County, George B. Brown, filed January 20, 2000, first came to the attention of the Petitioner when the appellee filed an Appellee Brief with the S.C. Court of Appeal on June 20, 2000. Then, Judge Kemmerlin by letter dated February 24, 2000 directed the Clerk of Court for Beaufort County to file the judgment inserting in his copy to the appellee an inappropriate *ex parte* postscript. A few days later the judgment was placed on the judgment rolls thereafter subject to execution by those unaware of its invalidity. The Order failed to convey the fact that a United States District Court had exclusive jurisdiction and that federal law forbade its issuance. The state court violated federal law in the exercise of this jurisdiction and the operation of the court. There is a duty imposed by both federal law, its decisional law and the U.S. Constitution, Article VI that imposes this legal obligation.

The U.S. District Court Judge Sol Blatt, Jr. did not remand *sua sponte*. 28 U.S.C. § 1446 (C)(4):

> The United States District Court in which such a notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the

court shall make an order for summary remand.

Instead, the senior judge Sol Blatt, Jr., assigned the case to the U.S. Magistrate Judge, Robert S Carr pursuant to 28 U.S.C. § 636. The respondent, Bettyann L. Talley, *et al.* did not raise any allegation of defect move for remand or otherwise file any pleading in federal court though she demonstrated a knowledge of legal form and procedure. She did file an Appellee Brief in state court, on June 20, 2000, in the S.C. Court of Appeals though it was untimely. In that brief, Mrs. Talley falsely asserted that the appellant removed the case after Judge Kemmerlin's hearing, February 24, 2000 and attempted to characterize the Petitioner's absence from the hearing as a failure to attend. Had this been true, because Mrs. Talley did not raise the defect within 30 days, 28 U.S.C. § 1447 (C), it was subject to waiver.

The litigation concerns a dispute over typing fees where the appellee, a citizen of Georgia, residing in Savannah, Chatham County, brought suit in Magistrate's Court, Beaufort County, South Carolina alleging she was owed $616.00 in typing fees plus costs. The rate billed was $5.00/page; $1.00/ revision if more than just a few revisions were necessary including her errors. Mrs. Talley produced a poor work product, sought excessive reimbursement and to benefit from corruption she became aware of from the typing which eventually forced the resignation of the judge who rendered the judgment upon which state Judge Kemmerlin's February 24, 2000 Order rested. Judge Kemmerlin in his Order evaded the fact that a federal

court had exclusive jurisdiction and that the proceedings he conducted were in defiance of federal law.

Despite the sufficiency of 28 U.S.C. § 1446(d) as a stay, the appellant moved for an emergency Stay in U.S. District Court on March 2, 2000. A Stay was also filed March 10, 2000 in the circuit court of the 14th Judicial Circuit before the Chief Administrative circuit judge who in leaving town referred the motion to another circuit judge who felt the matter was best pursued in a higher state appellate court. A Writ of Certiorari was filed in the Supreme Court of South Carolina, $100.00 filing fee paid, pursuant to S.C. Appellate Court Rules, Rule 226(c), SCACR asking that the court interpret the federal statute 28 U.S.C. § 1446(d). Rather than exercise its authority under Rule 226(b), the Supreme Court acted to prolong the case referring it to the S.C. Court of Appeals who wanted to begin a briefing schedule of the federal case, where the case was ultimately continued until October 25, 2000. A Stay was filed on April 11, 2000 explaining the nature of the request. S.C. Court of Appeals Judge H. Samuel Stilwell issued an order Filed May 9, 2000 which denied the Stay after incorrectly interpreting the statute under both applicable state and federal cases. The Order conflicted with decisions of the state Supreme Court, Davis v. Davis, 229 S.E.2d 847 (1976) and decisions of this Court. Appeal was taken to the Supreme Court of South Carolina. The Court made official response by letter on May 23, 2000 asking the Petitioner to respond within 10 days why the case should not be dismissed citing Rule of Appellate procedure, Rule 226(a) and Aiken Speir, Inc. v. Henry, 326 S.C.268, 486 S.E.2d 492 (1997)(the Supreme Court will only review final decisions of the Court of

Appeals) apparently not realizing that only federal law and Federal Rules of Procedure governed. The Appellant replied, as the Clerk's office directed, by letter dated June1, 2000. The Court's issuance of an Order of Dismissal dated June 12, 2000 based on state law and procedure is unconstitutional. These proceedings are fully described in the Appellant's Petition for Writ of Certiorari to the Supreme Court of South Carolina under 28 U.S.C. § 1257. Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821) and Cooper v. Aaron, 358 U.S. 1 (1958) applying The Supremacy Clause, Article VI, U.S. Constitution, concerns the obligation of state governments to follow Supreme Court decisions and federal law.

The U.S. District Court Judge remanded the case June 14, 2000 adopting the U.S. Magistrate's Order and Recommendation as his own and dismissing the Appellant's Objections as being without merit. The Supreme Court has held that certain matters are "inherently judicial" and hence must be decided by an Article III court. Article III courts must be able *de novo* all questions of law, constitutional questions and jurisdictional facts. The Magistrate's Act codified at 28 U.S.C. § 636 excepts involuntary dismissal, from those things a magistrate may order. Long v. Lockheed Missile and Space Co., 783 F. Supp. 249 (D.S.C. 1992), Charleston Division, Chief Judge Hawkins, U.S. District Court; Rule 72 (b), FRCP, has termed remand the equivalent of a dismissal. The lack of consent did not allow the magistrate to direct entry of judgment but rather only a Report and Recommendation because contrary to what the magistrate states in his Order ("This Court joins that group of courts which hold that a motion to remand is non-dispositive and can be

determined by a magistrate judge by final order".), Long is the controlling law for the Charleston Division. Local Rules are silent. The Magistrate applies Rule 72(a) in a manner which is prohibited by 28 U.S.C. § 2072 in that this statute which governs federal procedure prohibits the use of a Rule to direct substantive results. 28 U.S.C. § 636 requires a magistrate to perform such duties as are not consistent with the constitution of the United States. Because the Magistrate characterizes his Order as non-dispositive, a lower standard of review may be applied which is unconstitutional under Article III and other provisions. The Magistrate cites a First Circuit case to support his contention that a Remand is non-dispositive but the First Circuit merely noted but declined to rule on that issue. The federal courts have failed to address these important questions of federal law that now come before this Court on Certiorari. There is no other opportunity to have any court review these federal law issues and the application of Constitutional principles by the lower courts. The rulings will essentially remain unreviewed if Certiorari is declined. Refusal to review might seriously erode federal interests with regard to the operation of its courts.

Notice of Appeal to the United States Court of Appeals for the Fourth Circuit was filed July 6, 2000 upon the Order of The Honorable Sol Blatt, Jr. entered on June 14, 2000. U.S. District Court Judge Sol Blatt, Jr., issued an Order dated July 21, 2000 requiring the Court of Common Pleas for the 14th Judicial Circuit to return the file to the U.S. District Court for forwarding to the U.S. Court of Appeals for the Fourth Circuit.

On June 20, 2000 the Supreme Court of South Carolina denied Appellant's Motion to Reinstate Appeal (Court will only review final decisions of the S.C. Court of Appeals)(Case previously dismissed for failure to pay $100.00 fee Rule 226 (c), SCACR.

On August 10, 2000, the S.C. Court of Appeals dismissed for failure of Appellant to provide proof of service of the Record on Appeal, Rule 210, SCACR issuing Remittitur on August 30, 2000. Appellant filed Motion in the S.C. Court of Appeals on September 11, 2000 to Recall Remittitur and Set Aside Order of the Honorable H. Samuel Stilwell entered on May 9, 2000. On September 13, 2000, the Magistrate for Beaufort County issued a Transcript of Judgment which indicated that there may have been a hearing, no notice was provided and the Transcript was transmitted by U.S. mail postmarked November 8, 2000.

On October 6, 2000 the Magistrate for Beaufort County, the Honorable A. Scott Dudley, Jr. directed a stay be entered under 28 U.S.C. § 2101(f) pending Petition for Writ of Certiorari to the U.S. Supreme Court.

The United States Court of Appeals for the Fourth Circuit by unpublished opinion issued its decision dismissing the case under 28 U.S.C. § 1447(d)(1994) In pertinent part the Order states, "Accordingly, we dismiss the appeal. We deny Jonas' motion to recall the remittitur and set aside a state court order." The Court denied Appellant's Petition for Rehearing/suggestion for Rehearing *en banc* on November 20, 2000. The Mandate was filed November 28, 2000. The Court filed an Order in which

Appellant's Motion to Stay Mandate pending Application to the United States Supreme Court for a Writ of Certiorari was denied.

The South Carolina Court of Appeals denied Appellant's Motion to Recall Remittitur and to Set Aside Order of the Honorable H. Samuel Stilwell, entered on May 9, 2000 on October 25, 2000.

ARGUMENT

1. **Whether in considering the U.S. Magistrate's Order and Recommendation and determining Appellant's Objections were without merit, the District Court judge properly reviewed under Article III and the governing federal law 28 U.S.C. § 636 by appropriate standards and Long v. Lockheed Missile and Space Co., 783 F. Supp. 249 (D.S.C. 1992), Charleston Division, correctly assessing the Magistrate's excessive assumption of authority under those provisions as an Article I judge, 5th Amendment being applicable; important questions of federal law and a conflict of law among the circuits that has not been, but should be settled by this Court.**

The authority of a United States Magistrate is granted pursuant to 28 U.S.C. § 636 as well as relevant decisional law and Federal Rules of Procedure. Local Rules are silent to the issue in this instance of the Remand being considered dispositive beyond the authority of the Magistrate to grant, particularly absent

consent. A Magistrate's exercise of this authority must be consistent with judicial power granted by the U.S. Constitution to an Article I judge which is distinguishable the authority granted an Article III judge of a U.S. District Court. In this instance and territory, the Magistrate's authority is governed by Long v. Lockheed Missile and Space Co., 783 F. Supp. 249 (D.S.C.), Charleston Division and Rule 72 (b), FRCP, in accord with Third Circuit case Giangola v. Walt Disney World Co., 753 F.Supp.148 (D.N.J. 1990). Those cases have national standing for the view that Remand is dispositive, excepted under 28 U.S.C. § 636 from those matters which a magistrate may consider. The view is particularly relevant here because the Order of Chief Judge Hawkins, an Article III judge, Charleston Division, is not subject to overrule by an Article I judge. Such exercise of authority is inconsistent with the U.S. Constitution and the standard of review mandated by the Statute to ensure proper review of matters "inherently judicial" and to preserve the doctrine of separation of powers. The District Court Judge's Order in which he finds that the Appellant's Objections raising these issues were without merit and his application of the lesser standard of review is an abuse of discretion in violation of Article VI, U.S. Constitution and the 14th Amendment. The lack of consent poses due process problems under both the 5th and 14th Amendments. The Magistrate incorrectly asserts jurisdictional facts that "Both the Plaintiff and defendants are citizens of South Carolina, so complete diversity is lacking in this case." However, the Plaintiff is a citizen of Georgia residing in Savannah, Chatham County; the Defendant is a citizen of South Carolina, residing in Beaufort County. A federal court is not bound by the parties' characterization of a case or its

appropriate parties. The U.S. Magistrate's statement, ("This Court joins that group of courts which hold that a motion to remand is nondispositive and can be determined by a magistrate judge by final order.") is indicative of the lack of proper consideration under the controlling authority referenced above. These issues raise substantial questions of constitutional and federal law because of the improbability of meaningful district court review in violation of due process and equal protection rights and Article III. Some federal court must exist to hear cases and controversies specified under Article III. The district court judge does not properly distinguish the powers and responsibilities delegated to an Article III judge under the Constitution with those delegated to an Article I judge affecting the proper exercise of jurisdiction and application under Article III and Article VI. In Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 86, n.39 (1982). Justice Brennan stated "the requirements for the exercise of judicial power must be met at all stages of adjudication". The Supreme Court in its governance of Article III courts has found that Article III courts must be able to decide *de novo* all questions of law, constitutional issues, and jurisdictional facts, St. Joseph's Stockyards Co. v. United States, 298 U.S. 38, 84 (1936), (J. Brandeis, concurring).

Justification for Removal exists pursuant to 28 U.S.C. § 1446(b) which provides a petition for Removal may be filed within (30) days of when it may be ascertained that the case is one which is or has become removable. Henniford v. American Motors Sales Corporation, 471 F.Supp. 328 (D.S.C. 1979). Other authority allows the time period to be extended is where

there is good cause, Martropico Compania Navierra S.A., 478 F. Supp. at 1038, or extraordinary circumstances, Gray v. Permanent Mission of the People's Republic of the Congo to the United Nations, 443 F. Supp. 816, 821 (2d Cir. 1978). Removal jurisdiction originally was available to both a plaintiff and a defendant. Although, removal jurisdiction is not expressly mentioned in Article III, where Article III defines the matters that federal courts may hear, it is silent as to the procedures that may be used to initiate federal court jurisdiction. Federal jurisdiction exists if there is diversity of citizenship under 28 U.S.C. § 1332 or if there is federal question jurisdiction under 28 U.S.C. § 1331. Federal question jurisdiction is available when the case arises under the Constitution, the laws of the United States or its treaties. A case arises under federal law if it is based on a course of action created by federal law. In Osborn v. United States, 22 U.S. (9 Wheat) 247, 823 (1824), Chief Justice Marshall wrote for the Court, for purposes of Article III, there is a federal question wherever federal law is a potential ingredient of the litigation. The Court then explained that under the Constitution a case arises under federal whenever federal law "forms an ingredient of the original cause...[even though] other questions of fact or law may be involved in it." The Supreme Court has not formulated a clear test to determine when the presence of a federal law in a state law action constitutes a federal question. Federal court jurisdiction to hear suits under 42 U.S.C. § 1983, *et seq.*, exists under the general federal question jurisdictional statute, 28 U.S.C. § 1331 pursuant to 28 U.S.C. § 1343(3) which grants to redress violation of federal laws that provide for the equal protection of citizens. The enforcement provisions of 42 U.S.C. § 1985 (3) and the

14th Amendment, Section 5 are relevant preemptive provisions. Pendent jurisdiction is expressly authorized by 42 U.S.C. § 1983, *et seq.*, and the authorization permits the case to be tried in the federal forum.

The Appellee chose to file only one pleading, which she elected to file in the S.C. Carolina Court of Appeals on June 20, 2000 rather than the federal court of jurisdiction. That pleading was untimely and she chose not to serve it on the Appellant though the pleading which was prepared and previous work experience demonstrated a legal background. The district court remanded the case on June 16, 2000, (Order dated June 14, 2000), not waiting until the time for appeal to the U.S. Court of Appeals for the Fourth Circuit had expired. The state appellate courts and the Appellee continued the course of disregard of exclusive federal jurisdiction inclusive of federal law and procedure, unnecessarily increasing Appellant's costs and efforts. Later the court by Order filed July 21, 2000 recalled the file from state court to forward to the U.S. Court of Appeals for the Fourth Circuit. Because the Appellee did not raise or respond to any relevant issues in federal court, under 28 U.S.C. § 1447(c), waiver is imposed upon any jurisdictional defect that might have been addressed. The pleading likewise has no effect in state court because the courts lacked jurisdiction and because the pleading was both untimely and not served on the Appellant until the Appellee was required to do so by the S.C. Court of Appeals. Under 28 U.S.C. § 1446(c)(4), the United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary

remand. In this case, the court did not issue remand *sua sponte.*

The U.S. District Court and the state courts have acted in a way which conflicts with federal law and the U.S. Constitution as to call for the exercise of this Court's supervisory powers under Article III and Article VI, U.S. Constitution.

2. **Whether appellate review is derived from 28 U.S.C. § 636; Federal Rules of Civil Procedure, Rule 73(c), Appeal; Federal Rules of Appellate Procedure, Rules 3, 4, and 5.1, including Advisory Committee Notes, 1986 Adoption and 28 U.S.C. § 1254(1) and 28 U.S.C. § 1291 in accord with Catlin v. United States, 324 U.S. 229 (1945) where there is tension with 28 U.S.C. § 1447(d), an important question of federal law that has not been, but should be settled by this Court.**

The Magistrate's Act codified 28 U.S.C. § 636 provides in pertinent part, (b),(C),(3), a magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States; (c)(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in doing so, shall also advise the parties that they are free to withhold consent

without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent; (c)(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

28 U.S.C. § 1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1291: The Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction from all final decisions of the district courts of the United States, except where a direct review may be had in the Supreme Court.

Rule 73, Federal Rules of Civil Procedure, FRCP.(c). Appeal. In accordance with Title 28, U.S.C. § 636(c)(3), appeal from a judgment entered upon the direction of a magistrate judge in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court;

Rule 3, Federal Rules of Appellate Procedure, FRAP. Appeals from judgments and orders of District Courts. An appeal permitted by law as of right from a district court to a court of appeals must be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4.

Rule 4, Federal Rules of Appellate Procedure, FRAP. (a) (1) Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from;

Rule 5.1, Federal Rules of Appellate Procedure, FRAP. Advisory Committee Notes, 1986 Adoption. When the initial appeal is taken to the district court, the statute provides for a second discretionary appeal to the court of appeals.

These provisions are in tension with 28 U.S.C. § 1447 (d):

> An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to § 1443 of this title shall be reviewable by appeal or otherwise.

Remand is sometimes regarded as interlocutory rather than a final for purposes of review. Where this is the case, exception to review is provided under the Collateral Order Doctrine and its federal case law. In this instance, the case is more appropriately reviewed under 28 U.S.C. § 1291 in accord with Catlin v. United States, 324 U.S. 229 (1945), and other applicable cases. In Pacor, Inc. v. Higgins, 743 F.2d 984, 990 (3rd Cir. 1984) appeal was allowed under the Collateral Order Doctrine pursuant to 28 U.S.C. § 1452. Apply the rationale of Pacor, 28 U.S.C. § 1447(d) does not apply, to orders entered under 28 U.S.C. § 636, review is governed exclusively by 28 U.S.C. § 636 and relevant federal rules and is sufficient.

This tension poses an important question of federal law that has not been, but should be settled by this Court.

3. **Whether The Supremacy Clause of the United States Constitution, Article VI, Clause 2, required the Supreme Court of South Carolina in the first instance to promptly interpret federal law 28 U.S.C. § 1446(d) where the Orders and assumption of jurisdiction by the lower appellate courts were in conflict with decisions of its court and those of the United States Supreme Court, (South Carolina Appellate Court Rules, Rule 226 (b), SCACR, $100.00 filing fee paid); this Court may exercise its supervisory authority to ensure recognition and compliance with federal law where failure to protect constitutional rights is**

cognizable under 42 U.S.C. § 1983, *et seq.* and the 14th Amendment Sections (1) and (5).

The case was properly filed in the United States District Court, Charleston Division, on February 23, 2000. The civil action became governed exclusively by federal law immediately effectuating the stay of all state court proceedings under 28 U.S.C. § 1446 (d). The state court judge, Thomas Kemmerlin, Jr., Master-in-equity, Special Circuit Judge by Appointment, acted knowingly in defiance of this federal law by continuing the proceedings in state court which federal law expressly prohibited and which the Appellant did not attend, Steamship v. Tugman, 106 U.S. 118, 123 (1882). A Return by the Magistrate for Beaufort County, George B. Brown, filed January 20, 2000 first came to the attention of the Petitioner when the Appellee filed an Appellee Brief with the S.C. Court of Appeals on June 20, 2000. The same date, Judge Kemmerlin directed the clerk of court file his Order dated February 24, 2000 and on the copy of the letter sent to the Appellee, included an inappropriate *ex parte* postscript. On February 29, 2000 the Clerk of Court's office filed the judgment and placed it on the judgment rolls where it became subject to execution.

Relevant constitutional law to these actions is The Supremacy Clause, Article VI,

> Clause 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;

> and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary not withstanding.
>
> Clause 3: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by oath or Affirmation, to support this Constitution

The State Court Judge Kemmerlin failed to convey in his Order that a United States District Court had exclusive jurisdiction so that his Order and directives were void *ab initio*. The Petitioner filed a Motion for Stay in the Circuit Court for the 14th Judicial Circuit of South Carolina. The Chief Administrative Judge referred the matter to any circuit judge just before leaving town who felt the matter was best presented to a higher level of state appellate courts. The Petitioner filed a Petition for Writ of Certiorari ($100.00 filing fee paid) to the Supreme Court of South Carolina pursuant to South Carolina Rules of Appellant Procedure, Rule 226 (b). Considerations governing review are stated as follows: Under this section of the Rule, the character of the reasons which will be considered are where there are novel questions of law; where there is a dissent in the decision of the Court of Appeals; where the decision of the Court of Appeals is in conflict with a provision of the Supreme Court; where substantial constitutional issues are directly involved; and where there is a federal question present. The Supreme Court may also exercise

its jurisdiction when its supervisory authority is invoked and in other circumstances. Under the federal law presented, the Court had a duty under Article VI, U.S. Constitution to promptly act. This duty was enhanced because the S.C. Supreme Court interpreted 28 U.S.C. § 1446(d) in Davis v. Davis, 229 S.E.2d 847 (1976) and applicable decisions of the Supreme Court of the United States. However, the Court referred the Petition for Certiorari to the S.C. Court of Appeals who directed a briefing schedule be initiated under the S.C. Rules of Civil Procedure even though the exclusive authority of federal law was clearly apparent. The Court of Appeals, Judge H. Samuel Stilwell entered an Order on May 9, 2000 which immediately returned the case to the Supreme Court of South Carolina because Judge Stilwell did not correctly interpret relevant federal law. The Clerk of the Supreme Court of South Carolina by letter dated May 23, 2000 directed the petitioner to submit a response within ten days why the Court should dismiss citing Rule 226 (a); Aiken Speir, Inc. v. Henry, 326 S.C. 268, 486 S.E.2d 492 (1997)(Supreme Court will review final decisions of the Court of Appeals). The Petitioner submitted timely response by letter dated June 1, 2000. The Supreme Court of South Carolina issued an Order of Dismissal dated June 12, 2000. The Court's issuance of the Order of Dismissal dated June 12, 2000 based on state law and procedure is unconstitutional. The case was ongoing in federal court. Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821) and Aaron v. Cooper, 358 U.S. 1 (1958) and Article VI, U.S. Constitution are relevant and applicable case law under which the Court may take appropriate action.

Directed by the South Carolina Court of Appeals, Petitioner filed an Initial Brief on June 7, 2000 upon the narrow issue presented; the application of the federal statute and ongoing proceedings in state courts under precedents of both the S.C. Supreme Court and this Court. Meanwhile the Petitioner's requested Reinstatement of Certiorari on the S.C. Supreme Court's Order of Dismissal dated June 12, 2000 where Rehearing in the Court of Appeals of the Order of Judge Stilwell would not be an appropriate or constitutional way to proceed under the application of federal law. The Court denied Reinstatement on July 20, 2000 (Court will only review final decisions of the S.C. Court of Appeals)(case previously dismissed for failure to pay $100.00 filing fee Rule 226(c), SCACR). The Dismissal was oriented to the correspondence between the Supreme Court's Clerk of Court dated May 23, 2000 and the Petitioner's Reply on June 1, 2000. On August 10, 2000, the S.C. Court of Appeals dismissed for failure of Appellant to provide proof of service of the Record on Appeal, Rule 210, SCACR issuing Remittitur on August 30, 2000. Appellant filed Motion in the S.C. Court of Appeals on September 11, 2000 to Recall Remittitur and Set Aside Order of the Honorable H. Samuel Stilwell entered on May 9, 2000. On September 13, 2000, the Magistrate for Beaufort County issued a Transcript of Judgment which indicated that there may have been a hearing, no notice was provided and the Transcript was transmitted by U.S. Mail postmarked November 8, 2000. The U.S. Court of Appeals for the Fourth Circuit in its unpublished opinion dismissing assumed pendent jurisdiction to deny Petitioner's Motion pending in the S.C. Court of Appeals to Recall Remittitur and set aside the Order of Judge Stilwell filed May 9, 2000. On October 25, 2000

the S.C. Court of Appeals denied the same Motion in their court.

Under 28 U.S.C. § 1446(d), the case proceeded in state courts from February 24, 2000, until October 25, 2000.

Certiorari should be granted because of the significant disregard for the U.S. Constitution and the laws of the United States as to call for this Court's supervisory powers under Article VI, U.S. Constitution, and that all related cases be consolidated.

CONCLUSION

For any one of the issues presented in this Petition, all raising important questions of federal law, Certiorari should be granted to the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

Nancy D. Jonas

Nancy D. Jonas,
Petitioner, *pro se*

February 18, 2001
Beaufort, South Carolina

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2000

----✦----

NANCY D. JONAS
Petitioner,

v.

BETTYANN L. TALLEY, et.al.
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

APPENDIX

Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, South Carolina 29901
1-800-791-1558

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Wed Feb 23 14:57:52 2000

UNITED STATES DISTRICT COURT

CHARLESTON, SC

Receipt No.	200 10190
Cashier	hilley
Check Number	90.09

DO Code	Div. No.
4671	2

Sub Acct	Type	Tender	Amount
1:086900	N	1	60.00
2:510000	N	2	90.00

Total Amount $ 150.00

9:99-612-08AJ FILING FEE

NANCY JONAS PO BOX 1563 BEAUFORT, SC 29901

CERTIFICATE OF SERVICE

I, Nancy D. Jonas, do certify that Notice of Removal and Complaint along with Appendix were served this 23rd day of February, 2000, upon the following:

The Honorable Larry W. Propes,
Clerk of Court
U.S. District Court
85 Broad Street, P.O. Box 835
Charleston, SC 29402
2 copies hand-delivered with fee
paid $150.00

FEB23 PM 4:31
CLERK OF COURT

The Honorable Gloria Williams
Clerk of Court
102 Ribaut Road (Gov't Center)
Beaufort, SC 29902
1 copy hand-delivered & UPS
overnight before 8:30 a.m.

Case No. C/A 99-CP-07-1567
Trial - February 24, 2000
before Judge Kemmerlin

Bettyann L. Talley
409 Wilshire Blvd.
Savannah, GA 31419
1 copy hand-delivered & UPS
overnight before 8:30 a.m.

Office of the Magistrate
P.O. Box 2207
Beaufort, SC 29901
1 copy ~~hand-delivered~~
via U.S. mail 1st class postage
affixed
to box post office

Case No. 9900825
Trial Judge: George B. Brown

State of South Carolina County of Beaufort	))	In the Court of Common Pleas Case No.: 99-CP-07-1567
Betty Ann Talley, Plaintiff, v. Nancy D. Jonas, Defendant.	))))))	ORDER

I scheduled the appeal in this case for February 24, 2000 at 9:30 a.m. The Appellant failed to appear. Attached is a copy of the Return of the Trial Justice. Had the Appellant been present for the appeal it would have made no difference. The trial court ruled upon the case based upon a determination of facts. I cannot on the record before me change the facts. APPEAL DISMISSED and Judgment of Judge Brown is restored and execution should issue to the Sheriff to seize the appropriate property of the Appellant to satisfy such judgment.

s/Thomas Kemmerlin, Jr.,
Master-in Equity and Special
Circuit Judge for the Court of
Common Pleas of Beaufort
County

Beaufort, South Carolina
This 24th day of February, 2000

State of South Carolina
County of Beaufort

In Magistrate Court
Case #9900825

Bettyann L. Talley
Plaintiff

Case #99-CP-07-1567

vs.

RETURN

Nancy D. Jonas
Defendant

The above Civil Case (99-0825) a Summons and Complaint was heard as a Bench Trial by the undersigned at Beaufort Magistrates Court, Beaufort County Courthouse, Beaufort, South Carolina on September 13, 1999.

The Plaintiff testified that she was hired by the defendant to provide typing at the rate of $5.00 per sheet and $1.00 a sheet for revisions. She testified the defendant did not provide her with any rules until she returned to make revisions. She did not provide her with a compute "disk". She presented a letter from defendant dated February 5, 1999 in which she said she was truly grateful for the work done and wanted plaintiff to bill her for all revision charges and she would then send money which she hopes to do soon.

Defendant testified she paid the plaintiff for a previous job which was improperly done. She stated she gave instructions as to how the work was to be done and that she gave plaintiff a computer disc, and the work was still not properly done.

I found for the plaintiff and told the parties I would issue a written judgment for $616.00 if the bill was not paid within thirty (30) days.

Dated: 1/20/2000

Respectfully Submitted,

s/George B. Brown,
Magistrate

MASTER IN EQUITY
Thomas Kemmerlin, Jr.
P.O. Drawer 1228
Beaufort, South Carolina 29901

(843) 470-5295

Date: February 24, 2000
Re: Betty Ann Talley vs. Nancy D. Jonas
Number: 99-CP-07-1567

Honorable Gloria Williams
Clerk of Court
Beaufort County Courthouse
Beaufort, South Carolina 29902

Dear Gloria:

Please file the attached order. By copy of this memo, I send copies of the order to the persons below. This should serve as their notice of filing.

Thank you for your assistance.

Yours truly,

s/Thomas Kemmerlin, Jr.

Tkjr:lh
Enclosure
Copy: Ms. Betty Ann Talley
Ms. Nancy D. Jonas

P.S. to Ms. Talley: At the time I heard the appeal, you asked me about some papers served upon you purporting to be a suit in Federal Court. I told you I thought it was just the ravings of a disappointed litigant who was foolish enough to think she knew some law. Now, after reading the papers, a copy of which I

received this morning, I must point out that while I think it is just so much foolishness which I would toss out of Court on my own motion if I were the Federal Judge, I am not the Federal Judge, and perhaps you should seek counsel. I should not have said anything on the subject to you.

s/Thomas Kemmerlin, Jr.

(Ms. Jonas' copy did not contain these remarks)

State of South Carolina
County of Beaufort County

Judgment in a Civil Case

In the Court of Common Pleas
Betty Ann Talley
Plaintiff(s)

Case No. 99-CP-07-1567
Nancy D. Jonas
Defendant(s)

Check One:

[ ] Jury Verdict. This action came before the court for a jury trial. The issues have been tried and a verdict rendered.

[ ] Decision by the Court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[x] Action Dismiss (Check Reason): [ ]Rule 12(b), SCRCP, [ ]Rule 41(a), SCRCP (Vol. Non Suit); [ ] Rule 43(k), SCRCP (Settled); Other-_____

[ ] Action Stricken (Check Reason); [ ]Rule 40(j) SCRCP; [ ]Bankruptcy, [ ]Other - _____

IT IS ORDERED AND ADJUDGED: [ ]See attached order; [ ]Statement of Judgment by the Court:

Dated in Beaufort, South Carolina, this 29th day of February, 2000.

s/Thomas Kemmerlin, Jr.
Presiding Judge

This judgment was entered on the 29th day of February, 2000, and a copy mailed first class this ____ day of _____, 20__ to attorneys of record or to parties (when appearing pro-se) as follows:

_____
Attorney for the Plaintiff(s)

Pro-Se
Attorney for the Defendant(s)
s/Mildred Fields

BEST AVAILAB

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CONCLUSION

The Petitioner respectfully requests that the court re-appraise the substantiality of the federal claim and that it grant the Petition for Rehearing.

Respectfully submitted,

Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, S.C. 29901
Tel: 1-800-791-1558

Dated: January 6, 1999
Beaufort, South Carolina

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Sample provided

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Clerk of Court
Supreme Court of S.C.
P.O. Box 11330
Columbia, SC 29211-1330

Check Writer Imprint Area $$100&00¢

From: N. D. Jonas
P.O. Box 1563
Beaufort, SC 29901

Notice of Appeal $100.00 filing fee

United States District Court
District of South Carolina

Filed
Mar 06 2000
Larry W. Propes

Bettyann L. Talley	)	Civil Action No.: 9:00-612-08AJ
Plaintiff,	)	
v.	)	ORDER
Nancy D. Jonas,	)	
Defendant.	)	
	)	

The defendant is a *pro se* litigant. Her attention is directed to the following important notice:

TO THE PLAINTIFF/PETITIONER:

You are ordered to always keep the Clerk of Court advised **in writing** (Post office Box 835, Charleston, South Carolina 29402) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to file something you are required to file within a deadline set by a District Judge or a Magistrate Judge, your case may be dismissed for violating this order. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address ***and providing the Court with the docket number of all pending cases you have with this Court.*** Your failure to do so will not be excused by the court.

Put this order with your own record of this case so that you will not overlook your duty. If an attorney serves you by mail on behalf of the plaintiff, you also have to notify that attorney if your address is to be changed for mail purposes.

The defendant is, hereby, informed that if her address changes in the future, she must provide *her* own address. Hence, the

Office of the Clerk of Court shall not enter any change of address submitted by the plaintiff which directs that mail be sent to a person other than the plaintiff (unless, of course, that person is an attorney admitted to practice before this court who has entered a formal appearance).

(Standard change of address order, which is to issued in all *pro se* cases). For the plaintiff's future reference, if the plaintiff wants copies (of items that she files with the Clerk of Court) returned to her, she (the plaintiff) must provide the copies and a self-addressed envelope with sufficient postage attached to the envelope.

IT IS SO ORDERED.

3/6/2000 s/Robert S. Carr
(Date) United States Magistrate Judge
Charleston, South Carolina

United States District Court
District of South Carolina

FILED
MAR 06 2000
Larry W. Propes

Bettyann L. Talley Plaintiff, v. Nancy D. Jonas, Defendant.	Civil Action No.: 9:00-612-08AJ Order and Recommendation

The above-captioned case was removed to the United States District Court for the District of South Carolina by the *pro se* defendant in a state court action. The underlying case in state court was an action filed by the plaintiff in the Magistrate's Court for Beaufort County. In her notice of removal, the defendant contends that the issues in the state court case are cognizable in this federal court under the diversity statute and under federal question jurisdiction.

Discussion

A defendant in a case in a state court may remove that case to a federal district court only if the state court could have been originally filed in a federal district court. 28 U.S.C. § 1441. Generally, a case can be originally filed in a federal district court if there is diversity of citizenship under 28 U.S.C. § 1332 or there if there is so-called "federal question" jurisdiction under 28 U.S.C. § 1331.

Various federal courts have held that the removal statutes are to be construed against removal jurisdiction, and in favor remand. *See, e.g.*, Cheshire v. Coca-Cola Bottling Affiliated, Inc., 758 F. Supp. 1098, 1102, 190 U.S.Dist. LEXIS® 12565 (D.S.C.. 1990)(collecting cases); and ,748 F. Supp. 434, 436, 1990 U.S. LEXIS® 14401 (W.D.Va. 1990).

It is well settled that a Notice of Removal must be filed by a defendant in the state court action within thirty days after the complaint in state court is served or with thirty day *after* the

case becomes removable. *See* 28 U.S.C. § 1446; and Heniford v. American Motors Sales Corporation, 471 F. Supp. 328 (D.S.C.. 1979), *appeal dismissed,* 622 F.2d 584 (4th Cir. 1980)[Table]. The original complaint in the above-captioned matter appears to have been filed in state court on September 13, 1999. Judgment was rendered in the state court case on October 14, 1999, and an appeal is pending before the Court of Common Pleas for Beaufort County. The case was removed by the defendant on February 23, 2000. The Notice of Removal was not timely filed. Moreover, there is no indication that the case became removable under Heniford, supra.

Although a federal court is not bound by the parties' characterization of a case or its appropriate parties, a district court must first look at the plaintiff's complaint filed in a state court to determine if "federal question" jurisdiction is present. Lyon v. Centimark Corporation, 805 F. Supp, at 334-335.

The complaint originally filed by the plaintiff in the Court of Common Pleas does not involve federal question jurisdiction. *See* Gully v. First National Bank in Meridian, 299 U.S. 109, 112-113 (1936). The complaint indicates that the state court action is for breach of contract.

In addition, the state court case could not have been filed in this federal district court because diversity of citizenship does not exist since the plaintiff and the defendants are all residents of the State of South Carolina. The diversity statute, 28 U.S.C. § 1332(s), requires complete diversity of the parties and an amount in controversy in excess of seventy-five thousand dollars ($75,000.00):

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between-

(1) citizens of different States[.]

28 U.S.C. § 1322. Complete diversity of parties in a case means that no party on one side may be a citizen of the same State as any party on the other side. *See* Owens Equipment & Erection Co. v. Kroger, 437 U.S. 365, 372-374 (1978). Both the plaintiff and defendants are citizens of South Carolina, so complete diversity of parties is lacking in this case. *See* 28 U.S.C. 1332; and Straw bridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806).

The law is unclear whether an order or a Report and Recommendation should be entered in this case, *see* Long v. Lockheed Missiles & Space Co., 783 F. Supp. 249, 1992 U.S.Dist. LEXIS® 2033 (D.S.C. 1992). Most case law subsequent to Long v. Lockheed Missiles & Space Co. has indicated that the undersigned may enter an order of remand. *See, e.g.,* Vaquillas Ranch Company v. Texaco Exploration & Production, Inc., 844 F. Supp. 1156, 1160-1163, 1994 U.S.Dist. LEXIS® 6300 (S.D. Tex. 1994)(criticizing the rationale in Giangola v. Walt Disney World Co., 753 F. Supp. 148 (D.N.J. 1990), and distinguishing Long v. Lockheed Missiles & Space Co., supra); Holt v. Tonawanda Coke Corporation, 802 F. Supp. 866, 868, 1991 U.S.Dist. LEXIS® 20886 (W.D.N.Y. 1991); McDonough v. Blue Cross of Northeastern Pennsylvania, 131 F.R.D. 467, 1990 U.S.Dist. LEXIS® 10921 (W.D.Pa. 1990); and City of Jackson v. Lakeland Lounge of Jackson, Inc., 147 F.R.D. 122, 124, 1993 U.S.Dist. LEXIS® 4348 (S.D.Miss. 1993)("This Court joins that group of courts which hold that a motion to remand is nondispositive and can be determined by a magistrate judge by final order.").

The United States Court of Appeal for the First Circuit in Unauthorized Practice of Law Committee v. Gordon, 979 F.2d 11, 12-13, 1993 U.S.App. LEXIS® 29613 (1st Cir. 1992), noted the existence of conflicting authorities, including Giangola v. Walt Disney World Co., supra, and Long v.

Lockheed Missiles & Space Co., supra, but declined to resolve the issue:

> It is evident that the magistrate and the district court judge in the instant case treated the motion to remand as a nondispositive matter within the authority of the magistrate to determine by final order. While we note the exiting and conflicting case law on this issue, we need not enter the fray at this time for we conclude that, in any event, we lack jurisdiction over this appeal.

Unauthorized Practice of Law Committee v. Gordon, supra, 979 F.2nd at 13.

In light of the greater weight of recent authorities holding that an order of remand can be entered by a magistrate judge, the undersigned in entering an order. Even so, this order can be appealed to a United Stats District judge for review "under the clearly erroneous or contrary to law standard." Vaquillas Ranch Company v. Texaco Exploration & Production, Inc., supra, 844 F. Supp. At 1163. *See also* McDonough v. Blue Cross of Northeastern Pennsylvania, supra, 131 F.R.D at 467.

IT IS THEREFORE ORDERED that this case is remanded to the Court of Common Pleas for Beaufort County.

If either party in the above-captioned case seeks to "appeal" this Order or file objections to this Order (if this Order is treated as a Report and Recommendation), the office of the Clerk of Court shall forward this case file and any objections or appeal(s) to a United States District Judge. *See* Fed. R. Civ. P. 72(a). The aforementioned conflicting authorities indicate that a United States District Judge can review this order "under the clearly erroneous or contrary to law standard" or can treat this Order as a Report and Recommendation.

To avoid the problems that arose in City of Jackson v. Lakeland Lounge of Jackson, Inc., supra, 147 F.R.D. at 123-124, **IT IS ORDERED that the Office of the Clerk of Court shall not immediately certify this Order to the Court Common Pleas.** If both parties in the above-captioned case fail to file an appeal of this Order or written objections to this Order (if this Order is treated as a Report and Recommendation) within fourteen (14) days after this Order is filed, the Office of the Clerk of Court shall then certify this Order to the Court of Common Pleas. If, however, either party files an appeal of this Order or written objections to this Order (if this Order is treated as a Report and Recommendation), the Office of the Clerk of Court at the end of the fourteen-day period, shall forward the case file and any appeal or objections to a United States district Judge for a final disposition. The parties' attention is directed to the important notice on the next page.

Respectfully submitted,
s/Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina
3/6/2000

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Bettyann L. Talley	)	C.A. No.: 9:00-0612-08AJ
Plaintiff,	)	OBJECTIONS TO ORDER AND
v.	)	RECOMMENDATIONS OF
Nancy D. Jonas,	)	MAGISTRATE JUDGE
Defendant.	)	ROBERT S. CARR
	)	

TO: Judges of the United States District Court for the District of South Carolina, Charleston Division

PLEASE TAKE NOTICE, that Objections to the Order and Recommendation of Magistrate Judge, Robert S. Carr, are being filed on Monday, March 20, 2000, pursuant to 28 U.S.C. § 636(b)(1)(C) and FRCP Rule 72, where the Order and Recommendation was served on March 10, 2000 by certified mail (Z 721 705 243). The Nalty case, 654 F. Supp. 1315 (S.D. Ala.) cited in Vaquillas Ranch Company, Ltd. v. Texaco Exploration and Production, Inc., 844 F. Supp. 1156 (S.D. Texas 1994) provides further authority as does Vaquillas.

In formulating Objections, 28 U.S.C. § 636, FRCP Rule 72, and case law was examined to determine the scope of jurisdiction and authority granted to the Magistrate. The issues presented in this case are whether the Motion to Remand was dispositive or non-dispositive under Federal Rules of Civil Procedure 72 and 28 U.S.C. § 636 (b)(1), and determination of the appropriate standard of review based on that finding.

OBJECTIONS

Objection 1. Magistrate's authority to issue Order of Remand.

The Defendant raises the issue of whether an Order remanding the case was within the power of the Magistrate or whether such a motion was dispositive, in which case the

Magistrate should submit a report and recommendation for consideration upon the *de novo* standard, as provided under the statute and the rules of procedure. Important to the discussion are the constitutional dimensions and the circumstances particular to the case as well as the conflict between the circuits which in itself raises a federal question in the case.

The Magistrate states, "the law is unclear whether the Order or a Report and Recommendation should be entered in this case." See Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249 (D.S.C. 1992), Charleston Division. The District Court, Hawkins, Chief Judge, held that (1) motion to remand was a dispositive motion outside the power of a magistrate judge. "A motion to remand to state court was equivalent of a dismissal and thus was a 'dispositive motion' outside the power of a magistrate judge." (3) "a court was not bound by the recommendation of a magistrate judge, and retained responsibility for the final determination."

Chief Judge Hawkins refers to the authority of 28 U.S.C. § 636(b)(1)(A).

> A magistrate [may] hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summons judgment. . . ., to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's Order is clearly erroneous or contrary to law.

The standard of review seems to apply to non-dispositive determinations. The term *de novo* signifies that the

Magistrate's findings are not protected by the clearly erroneous doctrine. The Magistrate's order disposes of claims and defenses signifying application of FRCP Rule 72(b).

The opinion further states: a motion to remand does not explicitly fall within any of the dispositive motions set forth in 28 U.S.C. § 636. This omission has led to a split of authority on the question. One line of cases has held that a motion to remand is not dispositive, relying solely on a statutory argument. [citations omitted]. Another line of thought on the subject is that an order to remand is not dispositive because "upon remand to state court all parties will be able to assert any claim or defense permitted in federal court."

In this case, recent action by Judge Kemmerlin, Jr., Master-In-Equity, Circuit Judge by Special Appointment should be noted. In defiance of the mandates of federal law, 28 U.S.C. § 1446(d), Judge Kemmerlin, Jr., continued judicial proceedings in state court in defiance of removal issuing an Order instructing, among other things, immediate execution on property sufficient to satisfy the judgment in the face of evidence showing the judgment was unwarranted. The Order issued was without jurisdiction since the case had been removed to the federal court. The cover letter to this Order directed the Clerk of Court to file the Order. The Clerk of Court filed the Order on February 29, 2000 and the judgment was placed on the judgment roll as a public record subject to publication. Prior to that, the dictates of the S.C. Rules of Procedure were ignored in a manner favorable to the Plaintiff.

The Plaintiff participates knowingly in this course of conduct by the state courts after having typed the second document where similar conduct was described. By reference, I incorporate this case and others into this matter. When Order of Remand determines that litigation will take place in state court rather than federal court, consideration of justice is required. It is probable and known by both the court and the Plaintiff that fair hearing will not be afforded, in fact no hearing

on the merits will be afforded, but execution of judgment summarily performed. The Order out of which execution will be effected was issued by the state court, Judge Kemmerlin, Jr., acting as a circuit judge, in defiance of federal law under 28 U.S.C. § 1446(d). The judgment has already been entered on the public record and is subject to publication. The remand is issued knowing state court bias. The purpose of removal is to avoid prejudice in local courts. Here, there has been a showing of prejudice. The fact that once remand is effectuated, review is not afforded on appeal or otherwise § 1447(d), even if erroneous, heightens caution. Although § 1343 provides exception. Judiciousness is required where a magistrate enters order of remand while noting conflict of opinion and authority among the circuits . The conflict itself raises a federal question.

Further because, the Chief Judge of the District of South Carolina, Charleston Division, recently held an Order to remand was dispositive subject to FRCP Rule 72(b) noting Local Rules were bereft of guidance and authority, the Magistrate's Order of Remand is without firm ground.

Quoting from another case, the argument is that the motion to remand does not reach the merits of the underlying dispute. The parties remain free to litigate the merits of the case following the disposition of the motion to remand, whether in state or federal court as justification for opinion that the Motion to Remand is governed by Rule 72(a). Here, the order disposes of claims and defenses or has the effect signifying dispositiveness governed by FRCP Rule 72(b).

Chief Judge Hawkins supports his opinion citing Giangola v. Walt Disney World Co., 753 F. Supp. 148, 152 (D.N.J. 1990) where that court held that a motion to remand was dispositive. The court stated:

> Perhaps no issue is so accurately described as a determination which will destroy or uphold the court's jurisdiction. While neither the statute

> nor the Local Rules specifically remove an order of remand from the jurisdiction of a magistrate, a remand order is the equivalent of a dismissal. The magistrate's order thus sought to effect an "involuntary dismissal" of the action. As such, the magistrate was not empowered to hear the matter. . . .

Chief Judge Hawkins, District of South Carolina, Charleston Division, wrote in 1992, "The analysis of the court in Giangola is the preferred approach to this case because it combines both the statutory language with the practical effects of a dismissal from federal court. Further, there is no provision in the Local Rules of this Court governing this matter. See Local Rule 19, DSC. Therefore, the Magistrate Judge is without authority to issue an order of remand. Consequently, the Order is viewed as a report and recommendation subject to the *de novo* standard. This analysis is cited in Vaquillas (S.D. Texas 1994) (5th Circuit).

Final determination and issuance of any enforceable court order, must derive from an Article III judge who remains ultimately responsible for the exercise or declination of a federal court's jurisdiction, Brock v. Heckler, 612 F. Supp. 1348(D.S.C. 1985). Article III, United States Constitution, requires that the powers delegated to federal magistrates by Congress, Article I, be limited to preserve the authority and integrity of Article III courts, United States v. Saunders, 641 F2d 659, 663 (9th Circuit, 1980); Horton v. State Street Bank and Trust Co., 590 F.2d 403, 404 (1st Cir. 1979).

The 1979 amendments, codified at 28 U.S.C. § 636(b)(1)(C), (c)(1) – Notwithstanding any provision of law to the contrary–upon consent of the parties, a full-time U.S. Magistrate or a part-time U.S. Magistrate who serves as a full-time judicial officer may conduct any and all proceedings (including a hearing on the issue of whether removal was proper

in this case), when specifically designated to exercise such jurisdiction by the district court or the courts he serves.

There must be consent of the parties, upon their written request and other rules. Here, there was no hearing, no consent or advisement, that parties are free to withhold consent without adverse substantive consequences. Here, the issue of the petitions sufficiency was raised *sua sponte* and not by motion. Where a magistrate cannot hear an issue properly raised and brought to the court's attention by a parties' motion, he cannot seize the power to raise the issue independently. As in Giangola, there is nothing to review as the Order is not a legally valid determination.

The Supreme Court in its governance of Article III courts has found that Article III courts must be able to decide *de novo* all questions of law, constitutional issues, and jurisdictional facts, St. Joseph's Stockyards Co. v. U.S., 798 U.S. 38, 84 (1936), (Brandis, J. concurring). This decision relates to legislative courts under Article I, and fundamental fairness concerns. The Supreme Court has declared that "the supremacy of law" Article VI demands that there shall be an opportunity to have some court decide whether an erroneous rule of law was implied. Inherently, when judicial issues are present, they must be decided by an Article III judge. An Article III judge is required because of the text of the Constitution and separation of powers, but is also based on due process considerations and where a federal question is raised because of the conflict between the circuits. A substantial question is raised under federal law and constitutional authority of the Fourteenth Amendment, Sections 1 and 5.

Thus, the Defendant requests that the Order and Recommendation be designated as a "Report and Recommendation" and reviewed *de novo* by this Court.

Objection 2. Justification and Authority for Removal. Discussion.

28 U.S.C. § 1446(b) provides a Petition for Remand may be filed within thirty (30) days of when it may be ascertained that the case is one which is or has become removable. Removal may be instigated by various factors including a copy of an amended Complaint, Motion, Order or other paper or by the conduct of the parties. Where Henniford may not be applicable to this case as the Magistrate suggests, other appropriate authority supports the principle and is hereby incorporated by reference. Exception to the statute § 1446(b) where the time period may be extended are afforded where there is good cause (Martropico Compania Navierra S.A., 478 F. Supp. at 1038), or extraordinary circumstances (Gray v. Permanent Mission of the People's Republic of the Congo to the United Nations, 443 F. Supp. 816, 821 (2nd Cir. 1978)). Removal jurisdiction is not expressly mentioned in Article III. Statutes have long authorized removal since the Judiciary Act of 1789. Article III defines matters that federal courts may hear, but is silent as to the procedures that may be used to initiate federal court jurisdiction. The paper which prompted removal was connected to an act of the circuit court which violated the South Carolina Rules of Civil Procedure. The procedure is common state to state and would have been known by Mrs. Talley as the way to proceed in making her request. Mrs. Talley did not proceed under the Rules of Civil Procedure, just as she demonstrated no respect for the Rules of the Court governing the project.

The case had previously raised significant equal protection concerns with its proceedings and as connected with other experiences so as to form a pattern that progressively worsened with significant abuse of civil rights by state officers in concert with Mrs. Talley.

The Complaint instigating the suit is questionable as the amount requested is not supported by the evidence. Further, the Complaint requires by signature, an attestation there is entitlement and that it is made in good faith under the SC Rules

of Civil Procedure. That the facts do not sustain the Complaint, and the award at trial of $616.00, raises the question of improper purpose and even bad faith, apart from the judicial conduct. Mrs. Talley knew from the second document she typed that she would likely benefit from an action brought in this court placing the Defendant in an involuntary position of having to defend in courts where records suggest repetitive bias and abuse of civil rights. Mrs. Talley witnessed a judgment entered upon her Complaint knowing it was not warranted, further implying complicity.

As evidenced in case law, the Court will, when authorized by law, disregard characterization of a case or its inappropriate parties to avoid unjust manipulation of its jurisdiction.

Generally, federal jurisdiction exists if there is diversity of citizenship under 28 U.S.C. § 1332 or if there is a so called "federal question jurisdiction" under 28 U.S.C. § 1331. Federal question jurisdiction is available when the case arises under the Constitution, the laws of the United States or its treaties. A case arises under federal law if it is based on a course of action created by federal law. In Osborn v. Bank of the United States, 22 U.S. (9 Wheat) 247 (1824) Chief Justice Marshall writes for the court, for the purposes of Article III, there is a federal question whenever federal law is a potential ingredient of the litigation.

The Supreme Court has not formulated a clear test to determine when the presence of a federal law in a state law action constitutes a federal question. The court may consider the existence of a federal question because of the importance of federal law to a state law claim and the desirability of having federal courts hear and decide federal questions within their jurisdiction. Federal question jurisdiction should exist whenever a federal law issue is likely to be dispositive.

The Constitution and the federal law regulates the operation of the courts and a federal question is raised whether

the state courts have violated federal law regulating the jurisdiction and operation of the courts under § 1446(d).

Metropolitan Life Insurance Company v. Taylor, 481 U.S. 58 (1987) is a case where the Supreme Court ruled that preemption defenses could be a basis for federal question jurisdiction.

The existence of federal question depends on an "evaluation of the interests at stake" and whether they are likely to be outcome determinative. These doctrines are found in numerous opinion of the U.S. Supreme Court.

Federal court jurisdiction to hear suits under 42 U.S.C. § 1983, et seq. exists under the general federal question jurisdictional statute, 28 U.S.C. § 1331 and pursuant to 28 U.S.C. § 1343(3) which grants jurisdiction for suits redressing violations of federal laws that provide for the equal protection of citizens. The enforcement provisions of § 1985(3) and U.S. Constitution Fourteenth Amendment, Section 5 are relevant preemptive provisions.

Further, the Court may exercise supplemental jurisdiction under the Judicial Improvements Act of 1990, codified as 28 U.S.C. § 1367. Pendent jurisdiction may be exercised when the state and federal claims derive from a common nucleus of operative facts. The Supreme Court explained, that pendent jurisdiction in the sense of judicial power, exists, whenever there is a claim arising under federal law and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case' under Article III where the federal issues substantially predominate, United Mine Workers v. Gibbs, 383 U.S. 715 (1966). Pendent jurisdiction is expressly authorized by 42 U.S.C. § 1983 et seq. and the authorization permits the case to be tried in the federal forum as governed by 28 U.S.C. § 1343.

Respectfully submitted,
s/Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, SC 29901
Telephone: 1-800-791-1558

March 20, 2000
Beaufort, South Carolina

The South Carolina Court of Appeals
Kenneth A. Richstad, Clerk
Ida R. Carson, Deputy Clerk
Post Office Box 11629
Columbia, S.C. 29211
(803) 734-1890

March 24, 2000

Nancy D. Jonas
Post Office Box 1563
Beaufort, SC 29901
Re: Talley, Betty v. Jonas, Nancy
Dear Mrs. Jonas:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 238(a) of the South Carolina Appellate Court Rules, and be advised that the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, SC 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(e), SCACR. Please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing seven classes of cases:

1) any final judgment from the circuit court which includes a sentence of death;

2) any final judgment from the circuit court setting pubic utility rates pursuant to Title 58;

3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;

4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state.

5) any final judgment from the circuit court pertaining to elections and election procedure;

6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;

7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,
Kenneth A. Richstad
CLERK

KAR/trg
cc: Bettyann L. Talley

The South Carolina Court of Appeals
Kenneth A. Richstad, Clerk
Ida R. Carson, Deputy Clerk
Post Office Box 11629
Columbia, S.C. 29211
(803) 734-1890

April 19, 2000

Via Certified and Regular Mail (Z029707113)
Nancy D. Jonas
Post Office Box 1563
Beaufort, SC 29901

Re: Talley, Betty v. Jonas, Nancy

Dear Mrs. Jonas:

Our records show that your Appellant's Initial Brief and Designation of Matter in the above case on appeal was due to be served and filed by April 13, 2000. It appears that you have failed to serve and file this brief by the deadline. Therefore, you must serve and file an original and six (6) copies of a Motion to file the Appellant's Initial Brief Out of Time. This motion should be accompanied by original proof of service and a filing fee of $25.00.

It is necessary that you serve and file this motion within fifteen (15) days from receipt of this letter or the appeal will be dismissed.

Very truly yours,
s/Kenneth A. Richstad
Clerk

KAR/tg
cc: Bettyann L. Talley

The South Carolina Court of Appeals

Kenneth A. Richstad, Clerk
Ida R. Carson, Deputy Clerk

Post Office Box 11629
Columbia, S.C. 29211
(803) 734-1890

May 9, 2000

Via Certified Mail (Z 029 707 123)
Nancy D. Jonas
Post Office Box 1563
Beaufort, SC 29901

Re: Talley, Betty v. Jonas, Nancy

Dear Mrs. Jonas:

Enclosed is a copy of Order of the Court DENYING your Motion in the above case.

This is also to advise the appellant that the Appellant's Initial Brief and Designation of Matter is due to be served and filed on or before June 7, 2000. By copy of this letter, all interested parties are informed of the Court's action in this matter.

Very truly yours,
s/Ida R. Carson
Deputy Clerk

KAR/tg
cc: Bettyann L. Talley

The South Carolina Court of Appeals

Betty Ann Talley, Respondent,

v.

Nancy D. Jonas, Appellant.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 1999-CP-07-1567

ORDER

Appellant appeals an order of the circuit court which dismissed her appeal of a magistrate's judgment and award of $616.00 for Respondent. Currently before the court is a motion entitled "Appellant's Motion to Stay Proceedings And Other Relief." Appellant asserts she "removed" the case to federal district court on February 23, 2000, the day before the scheduled hearing in circuit court. She maintains the circuit court was thus without jurisdiction to proceed with her appeal pursuant to 28 U.S.C. § 1446(d) (1994). However, 28 U.S.C. § 1446(a) requires the notice of removal of a civil action be filed within thirty days after defendant's receipt of the initial pleading. Assuming Appellant could have ever properly removed this case, her attempt to do so was untimely as she filed the notice of removal several months after the magistrate's September 13, 1999 hearing on the action which was commenced with a summons and complaint. Thus it appears the circuit court properly asserted jurisdiction over Appellant's appeal. Appellant's motion is DENIED.

IT IS SO ORDERED.

s/H. Samuel Stilwell, J.

Columbia, South Carolina
May 8, 2000

cc: Nancy D. Jonas
Bettyann L. Talley

The Supreme Court of South Carolina

Daniel E. Shearhouse
Clerk of Court
Brenda F. Shealy
Deputy Clerk

Post Office Box 11330
Columbia, South Carolina 29211
(803) 734-1499
Fax (803) 734-1498

May 23, 2000

REGULAR AND CERTIFIED MAIL

Ms. Nancy D. Jonas
Charles Street
P.O. Box 1563
Beaufort, SC 29901

Re: Talley, Bettyann v. Jonas, Nancy

Dear Ms. Jonas:

This Court has received your notice of appeal. Please be advised that decisions of the Court of Appeals are reviewed by filing and serving a petition for writ of certiorari and appendix under Rule 226, SCACR. The serving and filing of a notice of appeal is not sufficient.

Further, this Court only reviews final decisions of the Court of Appeals. Rule 226(a), Aiken Speir, Inc. v. Henry, 326 S.C. 268, 486 S.E.2d 492 (1997) (the Supreme Court will only review final decisions of the Court of Appeals). Since it appears that the order you are seeking to review is not the final decision of the Court of Appeals in this matter. I ask that you please explain, within ten (10) days of the date of this letter, why this matter should not be dismissed.

Finally, your letter indicates that a $100.00 filing fee is going to be sent. Please be advised that we have not received this filing fee.

Very truly yours,
s/Daniel E. Shearhouse
CLERK

DES/dmh

cc: Ms. Bettyann L. Talley
The Honorable Kenneth A. Richstad

NANCY D. JONAS
Charles Street
Post Office Box 1563
Beaufort, South Carolina 29901
1-800-791-1558

June 1, 2000

The Honorable Daniel E. Shearhouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

Re: Nancy D. Jonas, Appellant v. Bettyann L. Talley, Respondent
Civil Action No.: 99-CP-7-1567
(U.S. District Court, District of South Carolina C/A No.: 9:00-0612-08AJ)

Dear Mr. Shearhouse:

Response is submitted related to your letter dated May 23, 2000:

Notice of Appeal was filed with the court by facsimile pursuant to rule 233(a)(2), SCACR. Thereafter, an original of the document was immediately sent by U.S. Mail to the clerk as a preliminary measure in advance of properly filing and serving a petition for Writ of Certiorari and appendix under Rule 226, SCACR. Rule 226(c) states, "The copies filed with the Supreme Court (original and 6)" must be accompanied by the filing fee set by Order of the Supreme Court." The filing fee may be sent prior to completion of this process if desired.

The appeal was taken from the Order of the Honorable H. Samuel Stilwell, Justice, South Carolina Court of Appeals filed May 9, 2000. The Order denied Appellant's Motion for a Stay and Other Relief where the right to the stay was based on

federal law and the authority of the U.S. Constitution, Article I and Article III and relevant amendments.

28 U.S.C. § 1446 (d) provides:

> Promptly after filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the Clerk of such state court, which *shall* effect the removal and the state court *shall* proceed no further unless and until the case is remanded.

The stay was requested to address the actions of the state court on February 24, 2000 and February 29, 2000 (order and directives) Judge Thomas Kemmerlin, Jr., Master-In-Equity, Beaufort County, Special Circuit Judge by appointment at which time 28 U.S.C. § 1446(d) was controlling law as it is now.

The South Carolina Court of Appeals was asked to assume qualified and limited jurisdiction under Article VI and its inherent supervisory power to evaluate the applicability of 28 U.S.C. § 1446(d) to the actions of the lower court for the purposes of granting a temporary stay related to those actions. Whether jurisdiction exists for the SC Court of Appeals to make this determination poses a federal question. 28 U.S.C. § 1446(d) is unequivocal in foreclosing all state court jurisdiction.

This determination may be most appropriately made by the Supreme Court of South Carolina under Rule 226(b), SCACR.

However, the Order of Justice Stilwell must be evaluated where the Order erroneously upheld the jurisdiction and authority of the lower court despite evidence confirming 28 U.S.C. § 1446(d) had been effectuated and where the case is governed by 28 U.S.C. § 636 as a U.S. District Court civil action docketed as 9:00-0612-08AJ.

The Order does not reflect that the Respondent has made no objection to the stay. The Order may be premature where the

cover letter requests Appellant's Initial Brief and Designation of Matter be submitted by June 7, 2000. The findings of the court, that removal was untimely was the basis for denying and affirming jurisdiction of Judge Kemmerlin on February 24, 2000. This may be an inappropriate determination in that such as determination is one reserved to the U.S. District Court Judge under 28 U.S.C. § 636. The same statute cited in the Order as the basis for this finding additionally specifies that a case may be removed at such time as it becomes removable. There are other conditions and exceptions which apply to the circumstances. Jurisprudence suggests that the propriety of removal right or wrong is for a U.S. District Court Judge to determine. 28 U.S.C. § 1446(d) forbids the state to continue with proceedings during the process. To make the assumption made here might be construed as a form of advocacy suggestive of bias favoring the lower court. It lends an enormous aura of prestige with the potential to be influential.

Sufficient cause was presented to justify the request for a stay and other relief, the judgment is not supported by the evidence. There was a knowing attempt to evade the federal statute. The Order issued by Judge Kemmerlin, Jr., on February 24, 2000, poses a substantial threat to constitutional rights and there is potential for extreme harm where later review will be ineffective to repair.

The Motion for Stay is firmly grounded in law.

The matter should not be dismissed for the reason stated in your letter. It is appropriate, if this Court finds it may exercise jurisdiction, for the federal questions to be determined under Rule 226(b), SCACR rather than under Rule 224(J) SCACR by an appellate panel, or Rule 219(b) SCACR governing en banc proceedings, especially where the case resides in the U.S. District Court where it has substantially progressed. Such proceedings as conducted by the lower court essentially attempt to convert the case to a state proceeding in lieu of remand. Determination of the federal question is

important where there is a lower court decision that infringes on important constitutional rights and undermines the essential role of the federal judiciary in the appellate system under Article I and Article III. It threatens meaningful access to the federal judiciary that 28 U.S.C. § 1446(d) was meant to protect diverting resources and efforts and interposing improper interference. Further proceedings in the S.C. Court of Appeals would be a mere formality because the federal law issues will survive further proceedings and will warrant Supreme Court review. It will be duplicative and wasteful of judicial resources.

The issues must be finalized. Chief Justice Chase once observed "Jurisdiction is the power to declare the law." "It is quite clear, therefore, that this Court cannot proceed to pronounce judgment in this case, for it no longer has jurisdiction; and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.

Here, the Orders in question, the Order of February 24, 2000 and May 9, 2000 reviewing that Order show a departure from the essential requirements and obligations of the law controlling here.

Respectfully submitted,
s/Nancy D. Jonas
Appellant, *pro se*

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas

The Honorable Thomas Kemmerlin, Jr., Circuit Judge
by special appointment

Case no.: 99-CP-7-1567

(U.S. District Court, District of South Carolina
C/A no.: 9:00-0612-08AJ)

Nancy D. Jonas, ...Appellant

v.

Bettyann L. Talley, ...Respondent.

APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE FINAL BRIEF AND HOLD TIME IN ABEYANCE

The Appellant, Nancy D. Jonas, hereby moves this honorable court for an extension of time in which to file Appellant's Final Brief in this matter and to hold time in abeyance until the Supreme Court of South Carolina takes action under SCACR Rule 226(b) with regard to the Order of Honorable H. Samuel Stilwell, dated May 8, 2000.

s/Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, SC 29901
Telephone: 1-800-791-1558

Other Counsel of Record:
No appearances to date

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas

The Honorable Thomas Kemmerlin, Jr., Circuit Judge
by special appointment

Case no.: 99-CP-7-1567

(U.S. District Court, District of South Carolina
C/A no.: 9:00-0612-08AJ)

Nancy D. Jonas, ...Appellant

v.

Bettyann L. Talley, ...Respondent.

APPELLANT'S INITIAL BRIEF

s/Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, SC 29901
1-800-791-1558
Appellant *pro se*

June 7, 2000
Beaufort, South Carolina
No Opposing Appearance Made in Appeal

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Other Authority:

Constitutional Decision Making. Samuel Brest and Sanford Levinson, Little, Brown and Company, Boston 1983

Federal Jurisdiction, Erwin Chemerinsky, Aspen Press

S.C. Appeallate Court Handbook

Federal Jurisdiction, Wright Miller Cooper

STATEMENT OF ISSUES ON APPEAL

I. Whether the lower court in conducting a hearing issuing its Order and Directives (February 24, 2000) filed (February 29, 2000) acted in accordance with federal law 28 U.S.C. § 1446(d) enacted under Article I authority which was controlling law at the time so as to have lawful jurisdiction and authority.

II. Do the actions of the lower court, Judge Thomas Kemmerlin, Jr., signify a basic disregard for the principles and process of remand, where remand by a U.S. District Court judge pursuant to 28 U.S.C. § 636, FRCP, Rule 72(b), and relevant case law is the only process for the state court to gain lawful jurisdiction after removal so as to constitute an abuse of process and civil rights, violation of equal protection due process where additionally the record and evidence before the state court judge did not support the ruling sufficient to warrant appropriate review and possible action.

III. Where the lower court proceeded in defiance of § 1446(d) (§ 636) and FRCP Rule of 2 relevant case law where there was legal remand. Must the Order be pronounced void *ab initio* as lacking jurisdiction and authority under controlling law.

IV. Does this deliberate and extreme action by the lower court violate the canons of judicial conduct and professional responsibility and Article VI of the U.S. Constitution

STATEMENT OF THE CASE

The case comes before the South Carolina Court of Appeals as a referral from the Supreme Court of South Carolina. The appeal was taken from the Order of Judge Thomas Kemmerlin, Jr., Master-In-Equity for Beaufort County, Special Circuit Judge, dated February 24, 2000. Pursuant to further directives, the Order was filed February 29, 2000, and entered on the judgment rolls despite the applicability of federal law 28 U.S.C. § 1446(d) prohibiting a state court to proceed after removal is effectuated according to the Federal Rules of Civil Procedure. The Order is in conflict with controlling law and decisions of the U.S. Supreme Court and is not condoned by state authority. The South Carolina Court of Appeals may have a supervisory obligation to address the conduct of the lower court under SCACR, Rule 501 and the State Constitution and Article VI of the U.S. Constitution where the action taken is not warranted or legal.

The litigation concerns a dispute over fees where Mrs. Talley, a citizen of Georgia, residing in Savannah, Chatham County, brought suit in Magistrate's Court, Beaufort County, South Carolina alleging she was owed $616.00 in typing fees. The case was heard by Magistrate George B. Brown who issued judgment for $616.00 despite contradictory evidence presented at hearing. The evidence was additionally attached to appellate proceedings where Judge Kemmerlin, Jr., disregarded the error of the judgment and gives no weight to the evidence. There was no meaningful consideration but rather a predisposed finding. The Order evades the fact that a United States District Court has exclusive jurisdiction and authority is an omission and a deception.

Reviewing the facts of the case, Mrs. Talley presented herself as an expert typist with experience in legal work, having worked for a large Savannah law firm. She was informed of the exact nature of the work and provided comprehensive

instructional material which included a booklet with a typing insert issued by the federal court for whom the work was being prepared. Apart from these instructions, Mrs. Talley demonstrated independent familiarity by commenting on the page limitation relevant to the Motion initially prepared. A disc was provided in the first instance of work where the material was pre-typed. The request in that instance was to assemble the material in booklet form formatting under Rule 33 of the Supreme Court. The Rule specified text field, margins and other requirements including page number. All relevant instructions were provided and the booklet upon which certiorari had been granted was provided as an example.

However, Mrs. Talley produced a booklet, the text field of which violated Rule 33. The booklet ran 12 pages instead of 10. This evidenced intentional disregard for the work, the Rules of Court and the possibility of significant adverse effects. Ultimately, the work had to be redone at additional cost although the fee was paid to Mrs. Talley.

In the second instance or work, nearly simultaneous, the job was likewise a booklet preparation where Mrs. Talley typed approximately 20-25 pages of handwritten text which was neatly presented. The charges in both instances was $5.00 per page and $1.00 per page revisions. Revision was nominal because in the interim a social occasion had arisen, though the booklet was to be immediately filed. Mrs. Talley refused all but nominal revision despite there being apparent defects.

It is believed that Mrs. Talley scanned the appendix material never attempting to format or adjust the type face and size for consistency as required by Rule 33. The Court has on file a copy of this booklet dated January 14, 1999, evidencing the preparation described.

The work did not conform with the Rules of Court which specified (Rule 33 (1)(b)), "type size and face shall be consistent throughout." Rule 33 (1)(c) specifies the booklet size shall be 6 1/8 x 9 1/4", the text field, including footnotes,

should be 4 1/8 x 7 1/8". The text field prepared by Mrs. Talley in the first instance was 2 ½" (width) and 4 ½" (length) causing the booklet to be sized 8 ½ x 5 ½" instead of the required 6 1/8 x 9 1/4". The text field in the second document was 2 ½" x 6". The smallness of the text field caused the booklet to exceed the 10 page limit. The Table of Authorities was not reformatted from automatic computer production and some of the entries were not properly alphabetized. The project had to be redone at additional cost jeopardizing the case. There were several instances where manipulation or phrasing of the text suggested mischief and were nearly missed when Mrs. Talley was unable to allow sufficient proofing and minimal revision.

This evidence was viewed by the trial judge and Judge Kemmerlin, Jr., but was not given weight. The Order of February 24, 2000, included the Magistrate's Return, no copy of which was previously provided. A prior hearing was cancelled without regard for the dictates of the South Carolina Rules of Civil Procedure. The Appellant was notified of the rescheduling, but not afforded the requisite consent order under the Rules. The evidence did not support the judgment of the trial judge or the proceeding conducted by Judge Kemmerlin, Jr., even if jurisdiction were not the issue. Rule 501, Canons 1 - 3, provides recourse for unauthorized judicial conduct especially where court personnel is utilized as with the Clerk's office and enforcement officers.

Mrs. Talley is a knowing participant in a scheme where there is intent to harm through publication and relentless attempts to seize property upon contrived false judgments. She is aware of the defects of the work where the charges are inflated and unjustified. Her attestation is tantamount to bad faith.

These facts converge with federal jurisdiction in that the Appellant removed the case where access to the state courts was a meaningless exercise and often abusive of constitutional rights associated with due process and equal protection.

The Appellant removed the case citing appropriate grounds for removal. On February 23, 2000, the case was removed to the U.S. District Court effectuating 28 U.S.C. § 1446(d). The case has progressed in federal court under the governance of 28 U.S.C. § 636. The Order attempts to preempt the federal court in lieu of remand. The action shows apparent unconcern for the principles of remand which provide that the litigation shall take place in state court rather than federal forum. The disregard for federal law provides justification for a federal venue.

Where Judge Kemmerlin, Jr., actually effectuates the Order on February 29, 2000, involving court personnel threatens the state judicial system and its integrity and is responsive to criminal influences.

ARGUMENT

The case is controlled by the jurisdictional statute 28 U.S.C. § 1446(d) under the authority of Article I. The U.S. District Court has proceeded under 28 U.S.C. § 636. Only the U.S. District Court Judge possesses authority under Article III and § 636 to determine by *de novo* standard if remand is appropriate and the U.S.C. District Court Judge has not issued a ruling. In the Charleston Division, remand is considered a dispositive matter, Long v. Lockheed Missiles and Space Co., 783 F. Supp. 249 (D.S.C. 1992) Chief Judge Hawkins. This opinion has national standing for that proposition and is often cited. Federal Court jurisprudence indicates that when faced with the question of subject matter jurisdiction, the district court is obligated to make an independent determination of whether it has jurisdiction to entertain the claim. The crime-fraud exception may be a factor or consideration may be given to exceptional circumstances. State law claims may be preempted by federal law where Congress has so completely preempted a particular area that any civil complaint raising this select group of claims is preempted. 42 U.S.C. § 1983 and other law may provide appropriate preemptive ground where there is extreme

threat to civil rights. The actions of the lower court are repugnant to the Constitution and there is a duty for supervisory response to uphold the standards and integrity of the system.

CONCLUSION

Removal was timely implemented and removal of the case to the U.S. District Court effectuated 28 U.S.C. § 1446(d). "At that time, State jurisdiction ended and any further action in state court was void." Barrett v. Southern Ry. Co., 68 F.R.D. 413, 419 (D.S.C. 1975). "Consequently the verdict of the jury and further proceedings in the state court trial of this action after removal are a nullity." Heniford v. American Motor Sales Corp., 471 F.Supp. 328 (D.S.C. 1979). The Court set aside as null and void for want of jurisdiction. The Order of Judge Kemmerlin, Jr., must likewise be set aside as null and void and judgment #111455 be ordered stricken from the judgment rolls.

The Order of Judge Kemmerlin poses a potential conflict with decisions and policies of the South Carolina Supreme Court and the Supreme Court of the United States, Rule 226(b), SCACR and by reference such cases are incorporated.

The South Carolina Court of Appeals is obligated to evaluate the conduct of the lower court under relevant authority because such actions pose substantial concern for the judicial system, it integrity and its standards while threatening the constitutional rights of litigants.

Respectfully submitted,
s/Nancy D. Jonas
Charles Street, Post Office Box 1563
Beaufort, SC 29901
1-800-791-1558
Appellant *pro se*

June 7, 2000
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas

The Honorable Thomas Kemmerlin, Jr., Circuit Judge
by special appointment

Case no.: 99-CP-7-1567

(U.S. District Court, District of South Carolina
C/A no.: 9:00-0612-08AJ)

Nancy D. Jonas, ...Appellant

v.

Bettyann L. Talley, ...Respondent.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Complaint dated June 15, 1999 with itemization of accounts.

2. Answer dated August 12, 1999.

3. Notice of Civil Action dated October 13, 1999.

4. Return of Magistrate George A. Brown dated January 20, 2000.

5. Civil Appeals Roster for Beaufort County dated January 21, 2000, Master-In-Equity Thomas Kemmerlin, Jr.

6. Letter from Master-In-Equity Thomas Kemmerlin, Jr., dated February 8, 2000 rescheduling without consent.

7. Notice of Removal and Complaint with attachment dated February 23, 2000.

8. Filing Receipt dated February 23, 2000, showing fee paid and U.S. District Court Docket Number.

9. Order of Judge Thomas Kemmerlin, Jr., dated February 24, 2000.

10. Cover letter for Order of Judge Thomas Kemmerlin, Jr., dated February 24, 2000, to Clerk of Court, Gloria Williams, Beaufort County.

11. Entry of Form Order dated February 29, 2000, Enrollment of Judgment #111455.

12. Motion for Temporary Restraining Order ex parte dated March 10, 2000, presented to Judge Alexander Macaulay by judicial Clerk as directed by Judge J. Ernst Kinard, Jr.

13. Appellant's original handwritten text of Petition for Writ of Certiorari as presented for typing including appendix and other pretyped material with copy of relevant instruction material and examples of work desired appended.

14. Booklet - Rules of the Supreme Court for the United States adopted January 16, 1997, effecting May 1, 1997. Including special typing insert.

15. Motion in New Hampshire probate case docketed U.S. Supreme Court which Ms. Talley typed using disc, pre-typed text that was to be converted to booklet form.

16. U.S. Supreme Court case dated January 14, 1999, as typed by Ms. Talley on file with S.C. Court of Appeals docket No. 9706239. Typing is subject of the fee dispute.

17. Appellant's Notice of Appeal to the Supreme Court of South Carolina dated March 14, 2000.

18. Letter indicating referral from South Carolina Supreme Court to South Carolina Court of Appeals dated March 24, 2000.

I certify that this designation contains no matter which irrelevant to this appeal and I reserve the right to supplement the list if need arises.

s/Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, SC 29901
1-800-791-1558
Appellant *pro se*

June 7, 2000
Beaufort, South Carolina

The South Carolina Court of Appeals
Kenneth A. Richstad, Clerk
Ida R. Carson, Deputy Clerk
Post Office Box 11629
Columbia, S.C. 29211
(803) 734-1890

June 8, 2000

Nancy D. Jonas
Post Office Box 1563
Beaufort, SC 29901

Re: Talley, Betty v. Jonas, Nancy

Dear Mrs. Jonas:

This will acknowledge receipt of your Motion for Extension of Time to File Final Brief and Hold Time in Abeyance in the above entitled matter.

By copy of this letter, opposing counsel is requested to file an original and six (6) copies of a return to this motion no later than June 17, 2000, pursuant to Rule 224(e). Upon receipt of the return, the matter will be taken under consideration and you will be notified as soon as the action has been taken.

The time for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,
s/Kenneth A. Richstad
CLERK

KAR/ab
cc: Bettyann L. Talley

The Supreme Court of South Carolina

Betty Ann Talley, Respondent,

v.

Nancy D. Jonas, Petitioner.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 1997-CP-07-1567

ORDER of DISMISSAL

The above entitled matter is pending in this Court on a Notice of Appeal requesting review of a decision of the Court of Appeals. Due to the failure of petitioner to pay the one hundred ($100.00) filing fee in the above matter, as provided for in Rule 226(c) of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned matter be and hereby is dismissed.

JEAN H. TOAL, CHIEF JUSTICE
s/Daniel E. Shearhouse
CLERK

Columbia, South Carolina
June 12, 2000

cc: Ms. Bettyann L. Talley
Ms. Nancy D. Jonas (Regular and Certified Mail)
The Honorable Kenneth A. Richstad
The Honorable Gloria G. Williams

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Bettyann L. Talley Plaintiff, -vs- Nancy D. Jonas, Defendant.	))))))	Civil Action No. 9:00-612-AJ **ORDER**

The matter is before the Court by the pro se Defendant, who removed this action to federal court. The record includes the "Order and Recommendation" of United States Magistrate Judge Robert S. Carr, in which report the magistrate judge ordered that this case be remanded to state court, or he recommended the same, depending on whether the undersigned determined to review his order under the clearly erroneous or contrary to law standard or treat it as a report and recommendation. The parties were given notice of the right to file objections to the Report and Recommendation, and of the right to appeal from his decision, and of the consequences for a failure to do so; in response, the Defendant filed objections with the Court.

The Defendant objects to the magistrate judge's authority to issue an order of remand. Giving the Defendant the benefit of the doubt, this Court will treat the March 6, 2000, Order as a Report and Recommendation.

The Report and Recommendation of the United States magistrate judge was made in accordance with 28 U.S.C. §636 and the local rules of this district court concerning reference to a magistrate judge. See United States Magistrates, Local Rule 73.02, D.S.C.; Bowman v. Bordenkircher, 522 F.2d 209 (4th Cir. 1975). Under 28 U.S.C. §636(b),

> [a] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the

> court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Here, objections to the magistrate judge's report were filed, and the Court has conducted a de novo review of those parts of the magistrate judge's report to which the objections were made. Having reviewed the record herein, as well as the applicable law, the Court concludes that the objections are without merit.

The magistrate judge found that the Defendant untimely removed the action, and that there was no diversity of citizenship nor a federal question presented at the time of removal. The magistrate judge explained that the underlying state court action was for breach of contract, and that both the Plaintiff and Defendant are citizens of South Carolina.

In the objections, the Defendant argues that she timely removed the action when it first became apparent that the action was removable; she states that "the paper which prompted removal was connected to an act of the circuit which violated the South Carolina Rules of Civil Procedure." She appears to argue that a federal question is present, that is, whether the state courts have violated federal law regarding the jurisdiction and operation of the courts, and she argues that her equal protection rights have been violated.

This Court agrees with the magistrate judge's analysis that there is no diversity of citizenship and no federal question presented in the underlying action. The Defendant does not object to the magistrate judge's findings that the underlying action was for breach of contract and that both the Plaintiff and Defendant are citizens of South Carolina. The Defendant's complaints about how the state court has handled the civil action do not present a federal question; the federal question must arise from the merits of the Plaintiff's lawsuit. Moreover,

the Defendant did not explain the nature of the paper which prompted her removal, and it appears that her removal was untimely.

Accordingly, the magistrate judge's Report and Recommendation is adopted as the Order of this Court, and it is

ORDERED, that the above-entitled action be, and the same hereby is, remanded to the Court of Common Pleas for Beaufort County, South Carolina.

IT IS SO ORDERED.

s/Sol Blatt, Jr.
Senior U.S. District Judge

June 14, 2000
Charleston, S.C.

THE STATE COURT OF SOUTH CAROLINA
COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas

The Honorable Thomas Kemmerlin, Jr., Circuit Judge
by special appointment

Case no.: 99-CP-7-1567

(U.S. District Court, District of South Carolina)
C/A no.: 9:00-0612-08AJ

Nancy D. Jonas, ...Appellant

v.

Bettyann L. Talley, ...Respondent.

APPELLEE'S INITIAL BRIEF

Bettyann L. Talley
409 Wilshire Blvd.
Savannah, GA 31419-1335
(912) 925-7804
Appellee pro se

June 19, 2000

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Appellant properly removed, or could have removed, the action pending in the Magistrate Court for the County of Beaufort, State of South Carolina?

II. Whether the Order of the Magistrate Court of the County of Beaufort, State of South Carolina and Award dated September 13, 1999 should be affirmed?

STATEMENT OF THE CASE

This unfortunate case comes before this Honorable Court as an attempted appeal from a judgment from the Magistrate Court for Beaufort County, South Carolina. An appeal was taken from that judgment by he Appellant in this case. The Appellant failed to appear before a hearing scheduled in the appeal on February 24, 2000. Accordingly, a Special Master in Equity for the Court of Common Pleas for the County of Beaufort, State of South Carolina (Thomas Kemmerlin, Jr.) dismissed the Appellant's appeal in that Court. Subsequent to the Court of Common Pleas' dismissal of the Appellant's appeal in that Court, the Appellant filed this appeal.

In addition to filing an appeal in this Honorable Court, the Appellant also filed an appeal in the Supreme Court of the State of South Carolina. On June 12, 2000, the Supreme Court of South Carolina dismissed that appeal due to the Appellant's failure to pay the filing fee. (See, Appendix "A").

This Court has previously addressed the Appellant's appeal and has found it to be lacking. In this Honorable Court's Order of May 8, 2000, this Court found that the Appellant had not properly removed the originally-filed Magistrate Court action to Federal District Court. Accordingly, the Court found that the Appellant's argument that the Court of Common Pleas improperly asserted jurisdiction over her initial appeal from the Magistrate Court's Order was without merit. (See, Appendix "B").

ARGUMENT

The issues in this case have already been effectively decided. First, the Appellant simply did not properly remove the underlying Magistrate Court case between the parties. As this Court noted in its May 8, 2000 Order, the Appellant did not attempt to remove the case until several months after the Magistrate's September 13, 1999 hearing on the action.....". According to 28 U.S.C. §1446, a notice of removal of a civil

action or proceeding must be filed within thirty days after service of the Defendant with the original proceeding. In the instant case, the original proceeding in the Magistrate Court for the County of Beaufort, State of South Carolina was filed on June 15, 1999. (See Appendix "C"). The Appellant, who was of course the Defendant in the Magistrate Court action, filed an answer to that complaint on August 12, 1999. (See Appendix "D"). Following a hearing in the Magistrate Court on September 13, 1999, the Magistrate Court (G. Brown, presiding) awarded the Appellee a judgment of recovery of $616.00. Following that award and judgment, the Appellant in this appeal filed a Notice of Appeal to the Court of Common Pleas on October 13, 1999 (See Appendix "E"). Following the filing of this Notice of Appeal, the Special Master in Equity, for the County of Beaufort (Thomas Kemmerlin, Jr.) scheduled a hearing in the appeal (See Appendix "F"). The hearing was scheduled for February 24, 2000 at 9:30 a.m. However, the Appellant failed to appear for that hearing, and the Special Master dismissed her appeal and affirmed the judgment of the Magistrate Court in favor of the Appellee.

On February 23, 2000, the Appellant in this action filed a Notice of Removal to the United States District Court for the District of South Carolina (See Appendix "G"). This notice of removal was filed after the Appellant had answered the Magistrate Court action, after the Appellant had appeared at a hearing and argued her case to the Magistrate Court, after the Appellant filed an appeal of the Magistrate's Order, and, finally, after the Appellant failed to appear at her appeal in the Court of Common Pleas. Pursuant to 28 U.S.C. §1446, the Appellant's time for removal had long since passed, and her attempt to remove the case on February 23, 2000 was certainly outside the thirty (30) day window set by 28 U.S.C. §1446.

In addition to failing to comply with federal procedure governing removal, the Appellant simply had no right to remove the case. The only asserted basis for jurisdiction of the

United States District Court for the District of South Carolina was diversity jurisdiction. The Federal Courts only have diversity jurisdictions in matters involving a minimum of $75,000. As apparent from the Appellee's complaint originally filed in the Magistrate Court for Beaufort County, the amount in controversy in this case was only $616.00. Accordingly, even if the Appellant had properly followed procedure for removal, she had no right to remove the case, as the Federal Court had no jurisdiction over the case.

Accordingly, the Appellant's appeal should be dismissed and the Order any Judgment of the Magistrate Court should be affirmed.

Respectfully submitted this 19th day of June, 2000.

s/Bettyann L. Talley, Pro Se

409 Wilshire Boulevard
Savannah, GA 31419-1335
(912) 925-7804

The South Carolina Court of Appeals
Kenneth A. Richstad, Clerk
Ida R. Carson, Deputy Clerk
Post Office Box 11629
Columbia, S.C. 29211
(803) 734-1890

June 21, 2000

Certified 7099 3400 0011 0563 5197
Bettyann L. Talley
409 Wilshire Boulevard
Savannah, GA 31419

Re: Talley, Betty v. Jonas, Nancy

Dear Ms. Talley:

We are in receipt of your Appellee's Initial Brief in the above entitled matter.

Please be advised that it will be necessary for you to provide the Court with Proof of Service showing that the brief has been served of Appellant pursuant to Rule 208 of the South Carolina Appellant Court Rules. This information must be received on or before July 3, 2000.

Very truly yours,
s/Kenneth A. Richstad
CLERK

KAR/ab
cc: Nancy D. Jonas

REPLY

The Appellant submits Reply Brief pursuant to the Rules of Appellate Court Procedure, Rule 208 (a)(B), SCACR.

On June 20, 2000, the Respondent filed a Responsive Brief, entitled Appellee's Initial Brief. No motions or briefs have been filed in the federal court. In the Statement of Issues on Appeal, the Respondent, Bettyann L. Talley, asks the Court of Appeals to determine whether the Appellant properly removed, or could have removed a case which was pending in the Court of Common Pleas (not the Magistrate Court as she states).

Removal is effectuated by the defendant taking three procedural steps: "filing a Notice of Removal in the federal court, filing a copy of this Notice in the state court, and giving prompt written notice to all adverse parties," Wright Miller Cooper, Federal Practice and Procedure, Jurisdiction, § 3737. Removal in this case was effectuated February 23, 2000 and in addition to the procedure described above, copy was hand-delivered to Judge Kemmerlin's office with instructions for immediate delivery on February 23, 2000 and to inform Judge Kemmerlin (who was still in his office) that the case had been removed to federal court. Ms. Talley was likewise served via hand-delivery on February 23, 2000.

This procedure effectuated removal as of February 23, 2000, and the federal court assumed exclusive jurisdiction, 28 U.S.C. § 1446(d).was immediately effective. "State court proceedings are terminated as a matter of law; after removal, jurisdiction of state court absolutely ceases and state court has a duty not to proceed any further in the case, even if the case is improperly removed," Maseda v. Honda Motor Co., Ltd. 861 F.2d 1248 (11th Cir. 1988); Davis v. Davis, 229 S.E.2d 847, 267 S.E. 508 (1976) interpreting 28 U.S.C. § 1446(d). "Once removal proceedings to federal court are fulfilled and requisite

jurisdiction accomplished, state court loses all jurisdiction in the action."

Federally protected rights of removal are not to be inhibited by state prosecutions and continuation of state prosecutions is unconstitutional under Article VI, U.S. Constitution. The case progressed under 28 U.S.C. § 636, which shows the federal court took the view that the action had been effectively removed.

The U.S. District Court acquires full and exclusive jurisdiction over the litigation, Wright Miller Cooper, Federal Practice and Procedure, Jurisdiction § 3738; Moore v. Interstate Fire Ins. Co., 717 F.Supp. 1193 (S.D. Miss. 1989). Where faced with subject matter jurisdiction, a district court is obligated under Article III, U.S. Constitution to make an independent determination of whether it has jurisdiction to entertain the claim. The question of whether removal jurisdiction exists in a case is to be decided by the district court judge, Mall v. Atlantic Financial Federal, 127 F.R.D. 108 (W.D. Pa. 1986); Recchion v. Kirby, 637 F.Supp. 290 (W.D. Pa. 1986). Federal law and not state law governs all removal proceedings, that Grubbs v. General Electric Credit Corp., 405 U.S. 699 (1972); Granny Goose Foods, Inc. v. Teamsters and Auto Truck Drivers, Local #70 of Alameda Co., 415 U.S. 423, 437 (1974); Wright v. Central States, Southeast and Southwest Areas, Health and Welfare Fund, 440 F.Supp. 1235 (D.C.S.C. 1977), citing Wright Miller Cooper.

Once removal proceedings to federal court are fulfilled and requisite notice accomplished, the state court loses all jurisdiction in the matter, Barrett v. Southern Ry. Co., 68 F.R.D. 413, 419 (D.S.C. 1975), "consequently the verdict of the jury and further proceedings in the state court trial of this action after removal are nullity," State of South Carolina v. Moore, 447 F.2d 1067 (4th Cir. 1971), Wright Miller Cooper, Federal Practice and Procedure, Jurisdiction § 3737. The proceedings . . . were improvidently granted and are ineffective. Patterson

v. Patterson, 381 F. Supp. 1029 (D. Colo. 1974), any further proceedings in the state court are considered *coram non judice*. "There is absolutely no question but that once removal procedures are completed, state jurisdiction ends and any further action in the state court is void." Stone v. South Carolina, 117 U.S. 430 (1886); South Carolina v. Moore, 447 F.2d 1067 (4th Cir. 1971); North Carolina v. Sullivan, 50 F. 593 (4th Cir. 1892). The Order of Judge Kemmerlin is null and void for want of jurisdiction.

II.

Misrepresentations of Appellee Brief. "The Appellant failed to appear before a hearing scheduled in this appeal on February 24, 2000." Appellant cites: Steamship v. Tugman, 106 U.S. 118, 123 (1882). "Moreover, the party who removed the case is not obligated to appear in state court and litigate the suit on the merits if the state court exercises jurisdiction in defiance of the removal." Appellee continues: "Accordingly, a Special Master-in-Equity for the Court of Common Pleas for the County of Beaufort, State of South Carolina (Thomas Kemmerlin, Jr.) dismissed the Appellant's Appeal in that court. Subsequent to the Court of Common Pleas' dismissal of the Appellant's appeal in that court, the Appellant filed this appeal." Appellant: Ms. Talley's brief attempts by "artful drafting" to connect failure to appear with dismissal with subsequent appeal to this Court of Appeals not mentioning the route the case took to federal court making the state proceedings unlawful. Appellee infers direct appeal to this court. Appellee continues: "In addition to filing an appeal in this Honorable Court, the Appellant also filed an appeal in the Supreme Court of South Carolina." "This Court has previously addressed the Appellant's appeal and has found it to be lacking. In this Honorable Court's Order of May 8, 2000, this Court found that the Appellant had not properly removed the originally filed Magistrate Court action to Federal District Court."

The Order of this court dated May 8, 2000, is erroneous as a matter of law, the Appellant respectfully avers. The question of whether removal jurisdiction exists in a case is to be decided by the district court judge, Mall v. Atlantic Financial Federal, 127 F.R.D. 109 (W.D. Pa. 1986); Recchion v. Kirby, 637 F.Supp. 290 (W.D. Pa. 1986). South Carolina Rules of Appellant Court Procedures, Rule 226(b), SCACR. Appellee: "Accordingly, the Court found that the Appellant's argument that the Court of Common Pleas improperly asserted jurisdiction over her initial appeal from the Magistrate Court Order was without merit." Appellant: Erroneous as a matter of law. The correct law was not applied. The argument of the "Appellee Brief" represents "the issues in this case have already been effectively decided." First, the Appellant simply did not properly remove the underlying Magistrate Court case between the parties. Appellant: the Appellee brief chooses to make numerous reference to this case as a Magistrate Court case when in fact it was pending before the Court of Common Pleas, a circuit court of the 14th Judicial Circuit of South Carolina. The argument reiterates, "the hearing scheduled for February 24, 2000 at 9:30 a.m. However, the Appellant failed to appear for that hearing and the Special Master dismissed her appeal and affirmed the judgment of the Magistrate Court in favor of Appellee."

Appellant: A serious instance of misinformation occurs when the Respondent (or counsel) writes "on February 23, 2000, the Appellant in this action filed a Notice of Removal to the United States District Court for the District of South Carolina, this Notice of Removal was filed after. . ., and finally, after the Appellant failed to appear at her appeal in the Court of Common Pleas." A second significant error was Appellee's failure to serve the brief on the Appellant until it was discovered by accident. Appellee: "In addition to failing to comply with federal removal proceedings governing removal, the Appellant simply had no right to remove the case."

Appellant That will be determined by the federal court. Removal procedures were perfected and the case progressed under 28 U.S.C. § 636, demonstrating that the federal court took the view that the action had been effectively removed. Appellee Brief: "The only asserted basis for jurisdiction of the United States District Court for the District of South Carolina was diversity jurisdiction." Appellant: This assertion overlooks another basis for jurisdiction, 28 U.S.C. § 1331 *et seq.* 42 U.S.C. § 1983 *et seq.* Furthermore, 28 U.S.C. § 1441(b) is applicable:

> Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States, shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

Appellee Brief: "The Federal Courts only have diversity jurisdiction in matters involving a minimum of $75,000, as apparent from Appellee's Complaint originally filed in the Magistrate Court for Beaufort County, the amount in controversy was only $616.00. Appellant: The judgment in Magistrate Court was not supported by the evidence and there was not supported by the evidence and there were discretionary errors. The amount in controversy of $616.00 does not adequately reflect the facts of the dispute or the intentional attempt to sabotage two important pieces of litigation including one having to do with probate/estate and other issues in another state which was pending before the U.S. Supreme Court. Appellee Brief: "Accordingly, even if the Appellant had properly followed the procedure for removal, she had no right to remove the case, as the federal court had no jurisdiction over

the case." Appellant: Appellee bases this assertion of lack of jurisdiction on her discussion of diversity jurisdiction, but omits mention that the federal court's jurisdiction may be based on federal question jurisdiction, 28 U.S. C. 1331 *et seq.* aided by other statutory provisions. The Appellant properly followed procedure and the overriding issue is the application of 28 U.S.C. § 1446(d) to the state court proceedings of February 24, 2000 and February 29, 2000 when removal was effectuated February 23, 2000. The federal court assumed jurisdiction and the case progressed under 28 U.S.C. § 636. The U.S. District Court, Chief Judge referred the case to the U.S. Magistrate Judge for preliminary report rather than dismiss *sua sponte.* The Appellee filed no pleadings in federal court, the court of jurisdiction.

Based upon the representations in the Appellee Brief, many of which are seriously flawed, the Appellee asks the Court of Appeals to rely on these representations and issue a dismissal of what she characterizes as an Appeal. What is actually before the court is a question of law and the court is asked to evaluate that question in relation to the application of the mandate of 28 U.S.C. § 1446(d); that the court might denounce the actions of the lower court, both for its conduct and improper exercise of jurisdiction on February 24, 2000 and February 29, 2000 pronouncing these actions void as a matter of law and proceeding under Rule 501 of the Code of Judicial Conduct and other authority to institute appropriate proceedings.

Ms. Talley did not appropriately oppose the facts of the law as the Appellant asserted them and she is now estopped. She wishes the court to rely on her brief to affirm the validity of the jurisdiction of Judge Kemmerlin for purposes of validating his Order and directives which are not legal. The legality of the Magistrate's Order has not been legally upheld, and in fact, it should not be affirmed because, there was no meaningful access

and the judgment was not supported by the evidence, even if that were properly an issue here on appeal.

What Ms. Talley requests the Court of Appeals cannot do as a matter of law. The federal statute 28 U.S.C. 1446(d) was effect as of February 23, 2000, not after the hearing as the Brief falsely asserts. The Court of Appeals does not consider the case as in appeal as Ms. Talley envisions, but only exercises limited jurisdiction to evaluate § 1446(d) being controlling law as of February 23, 2000. It must reach that conclusion. The lower court improperly asserted jurisdiction, and its Order and directives are void *ab initio*.

Respectfully submitted,
s/Nancy D. Jonas
Charles Street, P. O. Box 1563
Beaufort, SC 29901
Telephone: 1-800-791-1558

Beaufort, South Carolina
July 5, 2000

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas

The Honorable Thomas Kemmerlin, Jr., Circuit Judge
by special appointment

Case no.: 99-CP-7-1567

(U.S. District Court, District of South Carolina)
C/A no.: 9:00-0612-08AJ

Nancy D. Jonas, ...Appellant

v.

Bettyann L. Talley, ...Respondent.

APPELLANT'S MOTION FOR LEAVE TO REINSTATE AND MOTION TO REINSTATE THE APPEAL

The Appellant, Nancy D. Jonas, respectfully requests the court grant Leave to reinstate Appeal pursuant to the South Carolina Rules of Appellant Court Procedure, Rule 231, SCACP. Applicable case law and relevant authority are incorporated by reference.

Nancy D. Jonas
Charles Street, P.O. Box 1563
Beaufort, SC 29901
Telephone: 1-800-791-1558

Other Counsel of Record:
No appearances to date

The request relates to the Order of the Court of Dismissal dated June 12, 2000. The matter was pending in the Supreme Court on a Notice of Appeal requesting review of a decision of the South Carolina Court of Appeals, dated May 8, 2000 (filed May 9, 2000). There is good cause to support the request because there was the presence of due diligence and good faith. The delay has not been unreasonable or inexcusable, but rather unusual circumstances exist. There was no indication that the Appellant was neglectful or intended to abandon the appeal.

The delay in perfecting the appeal was based on intervening circumstances, some of which were beyond the Appellant's control. All the while there was due diligence and vigilance. Prejudice will not be a factor in reestablishing the appeal because the Respondent did not object to the application for the stay related to the Order of Judge Thomas Kemmerlin, Jr., dated February 24, 2000, or challenge the basis for the request which, in fact, is indisputable. More recently, the Respondent, Mrs. Talley, when instructed by letter (Court of Appeals, dated June 8, 2000) that "opposing counsel is requested to file an original and six (6) copies of a return to this motion" (Appellant's Motion for Extension of Time to File Final Brief and Hold Time in Abeyance) "no later than June 17, 2000 pursuant to Rule 224(a)", filed response (actually an "Appellee Brief") beyond the time specified and omitted sending a copy of the pleading to the Appellant.

Other factors relate to the course of the proceedings which allow some regard and deference to Justice Stilwell. There is concern that these parallel proceedings, if extensive, will undermine the position of the case before the federal court even though they are forced by the lawless action of the inferior court and may even be driven to subvert the federal proceedings.

Reinstatement is appropriate because of the presence of specified conditions where it is imperative for the court to grant

certiorari. Certiorari is particularly essential, Rule 226(b), SCACR, where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court: where substantial constitutional issues are directly involved; where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. The Court's supervising authority and power is appropriately invoked where there is abuse of the court system by a judicial officer which threatens the appellate structure. The conduct of Judge Kemmerlin, Jr., here showed an extreme departure from the essential requirements and obligations of the law controlling here while denying meaningful access to the judicial system. The conduct is examinable under the Rules of Professional Conduct and statutory authority making the writ additionally significant though the Order of Judge Stilwell did not directly address one issue..

Where jurisdiction of the lower court is called into question, there may be review prior to final judgment where the writ is based in part on absence, excess or usurpation of jurisdiction. The Court is authorized to review prior to final judgment. The common law use of the writ of certiorari corrects proceedings at an intermediate stage. Certiorari corrects erroneous decision and decision clearly contrary to law.

The mandate of 28 U.S.C. § 1446(d) imposes finality that is not subject to question or further adjudication as does the federal nature.

The dismissal deprives the appellant of substantial rights disproportionate to the basis in fee as set forth in the Order especially where steps were taken to inform the court of the case status and where there was significant dialogue by letter to Mr. Shearhouse, dated June 1, 2000. The letter addressed the fee issue which was raised at that time by indicating the fee would accompany the copies of the Petition for Writ of Certiorari, Rule 226(c) and by offering to send the fee in advance, if the court desired. There was never any attempt or

intent, as now, to neglect the Rules of court with regard to its fee.

Substantial and unjust prejudice will inure to the moving party if dismissal is not set aside. Overriding considerations provide sufficient allowance for reinstatement of appeal.

WHEREFORE, the Appellant prays the Court will find good cause and sufficient justification to set aside dismissal and to grant reinstatement of appeal.

s/Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, SC 29901
Telephone: 1-800-791-1558

June 27, 2000
Beaufort, South Carolina

The South Carolina Court of Appeals
Kenneth A. Richstad, Clerk
Ida R. Carson, Deputy Clerk
Post Office Box 11629
Columbia, S.C. 29211
(803) 734-1890

July 6, 2000

Certified 7099 3400 0011 0563 4947
Nancy D. Jonas
Post Office Box 1563
Beaufort, SC 29901
Re: Talley, Betty v. Jonas, Nancy

Dear Ms. Jonas:
The Court has granted your Motion for Extension of Time in the following order endorsed thereon:
"Granted.

Kaye G. Hearn, C.J.
For the Court

By: Kenneth A. Richstad
CLERK

Columbia, South Carolina
July 06, 2000."

Please be advised that your motion has been granted upon receipt of the proof of service for the Record on Appeal. You will be notified when Appellants Final Brief is due. The Respondent's Final Brief is due to be served and filed twenty (20) days after the proof of service of the Record on Appeal has been served.

Very truly yours,
s/Kenneth A. Richstad
CLERK

KAR/ab
cc: Bettyann L. Talley

The Supreme Court of South Carolina

Betty Ann Talley, Respondent,

v.

Nancy D. Jonas, Petitioner.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 1997-CP-07-1567

ORDER

Petitioner moves the Court to reinstate her appeal from the Court of Appeals' order denying her motion to stay. Petitioner's appeal was previously dismissed for failure to pay the $100 filing fee as required by Rule 226(c), SCACR.

The motion to reinstate the appeal is denied. See Rule 226(a), SCACR; Aiken Speir, Inc. v. Henry, 326 S.C. 268, 486 S.E.2d 492 (1997) (this Court will only review final decisions of the Court of Appeals).

IT IS SO ORDERED.

s/Jean S. Toal, C.J.
FOR THE COURT

Columbia, South Carolina
July 20, 2000

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Bettyann L. Talley	)	Civil Action No. 9:2000-612-8AJ
Plaintiff,	)	
-vs-	)	**ORDER**
Nancy D. Jonas,	)	
Defendant.	)	
	)	

On June 26, 2000, this action was remanded to the Beaufort County Court of Common Pleas. On July 6, 2000, the pro se Plaintiff filed a Notice of Appeal in federal court. For purposes of the appeal, this Court requests that the Clerk of Beaufort County Court of Common Pleas return the file to: United States District Court, Clerk of Court, Attention: Jane Wolper, P.O. Box 835, Charleston, SC, 29402, so that it may be sent to the Clerk of the Fourth Circuit Court of Appeals.[1] Accordingly, it is

ORDERED, that the Clerk of Court serve a copy of this Order on the Clerk of Beaufort County Court of Common Pleas.

IT IS SO ORDERED.

s/Sol Blatt, Jr.
Senior U.S. District Judge

July 21, 2000
Charleston, S.C.

[1]The Clerk of the Fourth Circuit Court of Appeals has requested the file.

The South Carolina Court of Appeals

Betty Ann Talley, Respondent,

v.

Nancy D. Jonas, Appellant.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 1999-CP-07-1567

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of appellant to provide proof of service of the Record on Appeal in the above matter, as provided for in Rule 210 of the South Carolina Appellate Court Rules.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellant Court Rules, the remittitur in the case will be sent to the Clerk of Court for Beaufort County after (15) days, exclusive of the date of filing this Order.

s/Kenneth A. Richstad, Clerk
For the Court

Columbia, South Carolina
August 10, 2000

cc: Nancy D. Jonas **Certified 7099 3400 0011 0563 4268**
Bettyann L. Talley
The Honorable Gloria G. Williams

The South Carolina Court of Appeals

Betty Ann Talley, Respondent,

v.

Nancy D. Jonas, Appellant.

The Honorable Thomas Kemmerlin
Beaufort County
Trial Court Case No. 1999-CP-07-1567

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated August 10, 2000,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for Beaufort County.

s/Kenneth A. Richstad, Clerk
For the Court

Columbia, South Carolina
August 30, 2000

Original to: The Honorable Gloria G. Williams

cc: Nancy D. Jonas
Bettyann L. Talley

NANCY D. JONAS
Charles Street, Post Office Box 1563
Beaufort, South Carolina 29901
1-800-791-1558

September 11, 2000

VIA U.S. MAIL & FACSIMILE (803) 734-1496
Attn: Angela Bennett
The Honorable Kenneth A. Richstad
Clerk of Court, SC Court of Appeals
10 15 Sumter Street
Post Office Box 11629
Columbia, SC 29211

Re: **Nancy D. Jonas, Appellant v. Bettyann L. Talley, Respondent**
Civil Action No.: 99-CP-7-1567
(U.S. District Court, District of South Carolina C/A No.: 9:00-0612-08AJ)
(U.S. Court of Appeals for the Fourth Circuit No. 00-1909)

Dear Mr. Richstad:

Please find enclosed for filing Appellant's Motion to Recall Remittitur and Set Aside Order of the Honorable H. Samuel Stilwell, entered on May 9, 2000, along with the motion fee of $25.00 (via U.S. Mail), with regard to the above-referenced matter.

With appreciation for your assistance in this matter, I am

Sincerely,
s/Nancy D. Jonas
Appellant, *pro se*

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

Appeal from Beaufort Count
Court of Common Pleas

The Honorable Thomas Kemmerlin, Jr.,
M aster-in- Equity, Special Circuit Judge
by Appointment

Case no.: 99-CP-7-1567

Order (S.C. Court of Appeals, filed August 30, 2000

Nancy D. Jonas, ... Appellant,

vs.

Bettyann L. Talley, ... Respondent.

MOTION TO RECALL REMITTITUR AND TO SET ASIDE ORDER OF THE HONORABLE H. SAMUEL STILWELL, ENTERED ON MAY 9,2000

Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, SC 29901
Telephone: 1-800-791-1558

Other Counsel of Record:
No Appearances to Date

MEMORANDUM OF SUPPORT

The matter here arose from an appeal to the South Carolina Supreme Court of the Order of the Honorable Thomas Kemmerlin , Jr., Master-in-Equity, Special Circuit Judge by Appointment, dated February 24, 2000, to obtain a stay of the proceedings and other relief. The justification for requesting the stay was that the lower court unlawfully asserted jurisdiction in issuing the Order and directives carried out February 29, 2000. The case of as of February 23, 2000 was within the exclusive Jurisdiction of the U.S. District Court, District of South Carolina, Charleston Division, effectuating 28 U.S.C. § 1446(d). The South Carolina Court of Appeals provided notification that the Supreme Court of South Carolina had transferred the case on March 24, 2000 to the South Carolina Court of Appeals. Judge Stilwell erroneously interpreted federal law, 28 U.S.C. § 1446(d) and § 636, not properly recognizing the authority of the governing federal statute to the stay requested or correction the error of the lower court's improper assumption of the jurisdiction as required as a judicial duty by Article VI, U.S. Constitution. The South Carolina Court of Appeal had no jurisdiction of the case, but was only to assume limited jurisdiction for the purpose of affirming the stay and recognizing the authority of the U.S. Constitution and federal law to that issue alone. Rather the court incorrectly attempted abroad assertion of jurisdiction beyond its authority, directing proceedings including converting the federal to a state proceeding through use of procedural devices including briefs, forcing an extensive motion practice. This was not permitted because the case was controlled by federal law and was exclusively within the jurisdiction of the United States District Court during this period. The U.S. Court of Appeals for the Fourth Circuit currently has jurisdiction.

Therefore, the Remittitur as based on a continuation of excessive and unlawful assumption of jurisdiction must be

recalled and the Order of Justice Stilwell set aside. The Appellant prays this relief will be granted upon the court's own motion or upon consideration of this motion.

Respectfully submitted,
s/Nancy D. Jonas
Charles Street
Post Office Box 1563
Beaufort, SC 29901
Telephone: 1-800-791-1558

September 11, 2000
Beaufort, South Carolina

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-1909

BETTYANN L. TALLEY, Plaintiff-Appellee,

versus

NANCY D. JONAS, Defendant-Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Solomon Blatt, Jr., Senior District
Judge. (CA-00-612-9-8)

Submitted: October 12, 2000 Decided: October 19, 2000

Before WILLIAMS and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Nancy D. Jonas, Appellant Pro Se. Bettyann L. Talley, Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Nancy D. Jonas appeals the district court's order remanding this case to state court. We have reviewed the record and the district court's opinion accepting the magistrate judge's recommendation and find that because the district court

remanded this case for lack of subject matter jurisdiction , its order is unreviewable under 28 U.S.C. § 1447 (d) (1994). See Thermatron Prods. v. Hermansdorfer, 423 U.S. 336, 343-46 (1976) (holding limited on other grounds by Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 711-15 (1996)); Borneman v. United States, 213 F.3d 819, 824-26 (4th Cir. 2000). Accordingly, we dismiss the appeal. We deny Jonas' motion to recall the remittitur and set aside a state court order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

The South Carolina Court of Appeals
Kenneth A. Richstad, Clerk
Ida R. Carson, Deputy Clerk
Post Office Box 11629
Columbia, S.C. 29211
(803) 734-1890

October 25, 2000

Nancy D. Jonas
Post Office Box 1563
Beaufort, SC 29901

Re: Talley, Betty v. Jonas, Nancy

Dear Ms. Jonas:

The following Order has been endorsed on your Motion to Recall the Remittitur and to Set Aside of the Honorable H. Samuel Stilwell, Entered on May 9, 2000 in the above entitled case on appeal.

"Denied.

s/Carol Connor, J.

October 24, 2000."

Very truly yours,
s/Ida R. Carson
Deputy Clerk

IRC/ab

cc: Bettyann L. Talley

TRANSCRIPT OF JUDGMENT

State of South Carolina
County of Beaufort

Civil Case No. 9900826

Names of parties against whom Judgments have been obtained:

Attorney

Jonas, Nancy D.

202 Tennis Villas/POB 1563
Fripp Island, SC 29901-0000
Defendant(s),

Name of parties in whose favor Judgements have been obtained:

Attorney

Talley, Bettyann L.

409 Wilshire Blvd.
Savannah, GA 31419-0000
Plaintiff(s)

DAMAGES AND COSTS

Amount of Judgment	$616.00
Costs:	
Magistrate's costs	$ 30.00
Service of Papers	$ 10.00
Disbursments	$ 0.00
Total Costs	$ 40.00
Date of Judgment: 09/13/99	
Total amount of judgment costs and disbursements	$ 656.00

The issues in ths action were tried in the magistrate's court before MAGISTRATE FOR BEAUFORT COUNTY in

a jury/non-jury proceeding on the 13th day of SEPTEMBER, 2000; at which time, a verdict for the plaintiff was rendered on that date for $616.00 and/or other relief as stated below:

In addition to costs in the amount of $40.00.

It is adjudged that the plaintiff, TALLEY, BETTYANN L. recover from the defendant, JONAS, NANCY D. the amount of $616.00, plus costs in the amount of $40.00 and/or relief as stated below:

Dated: 9-13-00

s/Andrew Scott Dudley, Jr.
Magistrate

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 20, 2000

No. 00-1909
CA-00-612-9-8

BETTYANN L. TALLEY
Plaintiff - Appellee,

v.

NANCY D. JONAS
Defendant - Appellant.

On Petition for Rehearing and Rehearing En Banc

The appellant petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,
s/Patricia S. Connor
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 28, 2000

No. 00-1909
CA-00-612-9-8

Talley v. Jonas

MANDATE

The judgment of this Court dated 10/19/00 takes effect today.

PATRICIA S. CONNER
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
December 5, 2000

No. 00-1909
CA-00-612-9-8

BETTYANN L. TALLEY
Plaintiff - Appellee,

v.

NANCY D. JONAS
Defendant - Appellant.

ORDER

The appellant has filed a motion to stay the mandate pending application to the United States Supreme Court for a writ of certiorari.

The Court denies the motion.

For the Court - By Direction
s/Patricia S. Connor
CLERK

CONSTITUTIONAL PROVISIONS STATUTES AND RULES

U.S. Constitution

Article III, U.S. Constitution

Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their Offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;----between citizens of different States; in all cases affecting Ambassadors, other public Ministers and Counsels, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make.

Article VI, U.S. Constitution

Clause 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in

the Constitution or Laws of any State to the Contrary not withstanding.

Clause 3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath and Affirmation, to support this Constitution;----

5th Amendment, U.S. Constitution

No person shall---- be deprived of life, liberty, or property, without due process of law;---

14th Amendment, U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Federal Statutes

28 U.S.C. § 636(a): Each United States magistrate serving under this chapter shall have within the territorial

jurisdiction prescribed by his appointment---(1) all powers and duties conferred or imposed upon United States Commissioners by law –(b)(1): Notwithstanding any provision of law to the contrary---

I. a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief,...to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(C) The magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties. Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by the rules of Court. A judge of the court shall make a de novo determination of those portions of the report or specified findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

(C)(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(c)(2) 28 U.S.C. § 636 provides in pertinent part, (b),(C),(3), a magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States;

(c)(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in doing so, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent;

(c)(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the

> judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

28 U.S.C. § 1254: Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1291: The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, except where a direct review may be had in the Supreme Court.

28 U.S.C. § 1331: Federal Question. The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1332. Diversity of Citizenship, amount in controversy. The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the

sum or value of $75,000, exclusive of interest and costs, and is between—

1. citizens of different States;.....

28 U.S.C. § 1446(c)(4): The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

28 U.S.C. § 1446(d): Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

28 U.S.C. § 1447(c): A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under § 1446(a). ...

28 U.S.C. § 1447(d): An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise except that an order remanding a case to the State court from which it was removed pursuant to § 1443 of this title shall be reviewable by appeal or otherwise.

28 U.S.C. § 2072: Rules are not to affect jurisdiction.

42 U.S.C. § 1983, *et seq.*: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other

person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Federal Rules of Civil and Appellate Procedure

Rule 73, Federal Rules of Civil Procedure, FRCP.(c). Appeal. In accordance with Title 28, U.S.C. § 636(c)(3), appeal from a judgment entered upon the direction of a magistrate judge in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court;

Rule 3, Federal Rules of Appellate Procedure, FRAP. Appeals from Judgments and Orders of District Courts. An appeal permitted by law as of right from a district court to a court of appeals must be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. Rule 4, Federal Rules of Appellate Procedure, FRAP. (a) (1) Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from;

Rule 5.1, Federal Rules of Appellate Procedure, FRAP. Advisory Committee Notes, 1986 Adoption. When the initial appeal is taken to the district court, the statute provides for a second discretionary appeal to the court of appeals.

South Carolina Rules of Appellate Procedure

Rule 209: Record on Appeal.

(a): Time for Service. Within thirty (30) days after service of the last brief, the appellant shall serve three (3) copies of the Record on Appeal on each party who has served a brief. Proof of

service of the Record shall be immediately filed with the Clerk of the Supreme Court.

(b): Time for Filing. The appellant must file with the Clerk of the Supreme Court fifteen (15) copies of Record on Appeal no later than the date his brief(s) are due under Rule 210. The appellate court may require an appellant to file additional copies of the Record on Appeal.

Rule 210(a):Time to Serve and File. Within twenty (20) days after the service of the Record on Appeal, each party shall serve three (3) copies of his final brief(s) on every other party to the appeal, and file fifteen (15) copies of the final brief(s) with the Clerk of the Supreme Court. The party must also file with the Clerk proof that the final brief(s) has been served, and a certificate that his final brief(s) complies with Rule 210(b). The appellate court may require a party to file additional copies of its brief(s).

Rule 226(b): A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

1. where there are novel questions of law;
2. where there is a dissent in the decision of the Court of Appeals;
3. where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;
4. where substantial constitutional issues are directly involved;
5. where a federal question is present.

Rule 226(c): Time for Petitioning and Filing Fee. A decision of the Court of Appeals is not final until the petition for rehearing has been acted on by the Court of Appeals. A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Supreme Court within thirty (30) days after the petition for rehearing is finally decided by the court of appeals. An original and six(6) copies of the petition shall be filed with the Supreme Court. The copies filed with the Supreme Court shall be accompanied by the filing fee set by order of the Supreme Court. 1. By order dated April 17, 1990, this filing fee was set at one hundred ($100.00) dollars.